

Before the  
Surface Transportation Board

JR - 13

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

---

DELAWARE AND HUDSON RAILWAY COMPANY, INC. –  
DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION –  
IN NY, PA, NJ, MD AND DC

---

238555

ENTERED  
Office of Proceedings  
June 8, 2015  
Part of  
Public Record

JAMES RIFFIN'S MOTION TO COMPEL

THE DELAWARE AND HUDSON RAILWAY COMPANY, INC.

TO PROVIDE RIFFIN WITH THE DOCUMENTS HE REQUESTED ON

APRIL 20, 2015, AND ON MAY 1, 2015

Filed by:

James Riffin  
P. O. Box 4044  
Timonium, MD 21094  
(443) 414-6210  
[jimriffin@yahoo.com](mailto:jimriffin@yahoo.com)

1. James Riffin (“**Riffin**”), pursuant to 49 CFR 1114.31(a), herewith prays that the Surface Transportation Board (“**STB**”) issue an Order, Compelling the Delaware and Hudson Railway Company (“**D&H**”) to provide Riffin with the Documents he requested in his Initial Demand for Documents, served on the D&H’s counsel of record, on **April 20, 2015**, and the Documents he requested in his Supplemental Discovery Request, served on the D&G’s counsel of record on **May 1, 2015**, and in support hereof states:

2. While discovery is discouraged in abandonment proceedings, discovery is permitted regarding any matter. See 49 CFR 1114.21, which states in pertinent part:

**“§1114.21. Applicability; general provisions.**

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding. For the purpose of this subchapter, the informal proceedings are those not required to be determined on the record after hearing and include informal complaints and all proceedings assigned for initial disposition to employee boards under §1011.6.”

3. In exemption proceedings, such as this proceeding, 49 CFR 1121.2 governs, which states:

**“§1121.2 Discovery.**

Discovery shall follow the procedures set forth at 49 CFR part 1114, subpart B. Discovery may begin upon the filing of the petition for exemption or petition for revocation of an exemption. In petitions to revoke an exemption, a party must indicate in the petition whether it is seeking discovery. If it is, the party must file its discovery requests at the same time it files its petition to revoke. Discovery shall be completed 30 days after the petition to revoke is filed. The party seeking discovery may supplement its petition to revoke 45 days after the petition is filed. Replies to the supplemental petition are due 15 days after the supplemental petition is filed.”

**BACKGROUND INFORMATION**

4. On **March 19, 2015**, the D&H filed its Exemption Pursuant to 49 CFR 1121.2, Discovery is permitted to begin as of this date.

5. On **April 20, 2015**, Riffin served his Initial Discovery Request on the D&H. Riffin also filed a copy of his discovery request in the record of this proceeding.

6. On **April 20, 2015**, Riffin filed a Petition to Revoke the D&H's Exemption.

7. Riffin's Petition to Revoke noted on its cover page, that a discovery request had been served on the D&H.

8. On **May 1, 2015**, after the D&H had provided the STB with additional trackage rights information, Riffin served a Supplemental Discovery Request upon the D&H. Riffin also filed a copy of his supplemental discovery request in the record of this proceeding.

9. 49 CFR 1121.2 states that discovery "shall be completed 30 days after the petition to revoke is filed."

10. More than 30 days have elapsed since Riffin's latest discovery request was served on the D&H.

11. To date, the D&H has neither objected, nor responded to Riffin's discovery request, nor has the D&H provided Riffin with the documents that Riffin requested.

12. To date, the only thing the D&H has done, is, on June 2, 2015, file a Reply to [Riffin's] Notice of Appeal, wherein the D&H made the following false allegations:<sup>1</sup>

---

<sup>1</sup> Had the representations not been blatantly false, Riffin would not have felt a need to reiterate those false representations, with Riffin's arguments as to why the misrepresentations are false, as background information in this Motion to Compel. Being background information, Riffin argues that his responses are permitted. However, since the D&H is likely to object to Riffin's responses, on the grounds that Riffin's responses are an unpermitted 'reply to a reply,' Riffin will ask for the STB's permission to provide his responses, in order to make the record more complete, and in order to eliminate the need to further burden this proceeding with a Motion to Strike, asking the STB to strike the false statements. In effect, Riffin is saying that while he finds the false statements to be highly objectionable, he will defer to the STB's

- A. The D& H argued that Riffin’s appeal [of the Director of the Office of Proceedings May 13, 2015 decision, permitting the D&H to supplement / amend its Exemption, rather than rejecting the Exemption] does not meet the standards for an appeal.

**Response:** The D&H correctly states the criteria for filing an appeal. One need only meet one of the four criteria. Riffin’s appeal meets several of those criteria. 49 CFR 1152.50 (d)(3) is quite explicit: If an exemption notice contains false or misleading information, it is void *ab initio*, and **must** be rejected. The Director of the Office of Proceedings did not reject the Exemption. If the Exemption contains false or misleading information, then the Office of Proceeding’s failure to reject the Exemption, is material error of law, and is prejudicial to Riffin (unequal protection of the law) and to the general public. [Two appeal criteria.] So the only relevant questions are:

- a. Was the D&H’s failure to list **all** of the Zip Codes (A) In the notices sent to the four government agencies specified in 49 CFR 1152.50(d) (1); (B) In the notices published in nine newspapers; (C) In the D&H’s Exemption, a “Misrepresentation?” Riffin argued that it was both a ‘false statement’ and a ‘misrepresentation,’ for the notices represented that the D&H’s trackage rights traversed **only** the Zip Codes listed, when it fact the D&H’s trackage rights traversed an additional 13 Zip Codes.
  
- b. Was the D&H’s 49 CFR 1152.50(d)(2) certification [“a certificate that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been complied with.”] that it had **fully** complied with the notice requirements of 49 CFR 1152.50(d)(1) [“The notice **shall** name the railroad, describe the line involved, **including United States Postal Service ZIP Codes, ... .”** Bold added.] ‘false or misleading?’

---

discretion to afford the false statements, in light of Riffin’s responses, no weight.

- c. Riffin argued that the required ‘certification’ was ‘false or misleading,’ since the D&H’s certification certified that the **notices** sent to the four government agencies, listed **all** of the Zip Codes the lines traversed, when in fact, the **notices failed** to list **all** of the Zip Codes the lines traversed.
- d. The D&H argued, in its Reply, that the verified statement of Mr. Clements, does not contain a certification regarding the notices sent to the four government agencies. Riffin agrees.
- e. However, the problem is not with Mr. Clements’ verified statement. **The problem lies in Exhibit D**, a Certification by W. Karl Hansen, counsel for the D&H, wherein Mr. Hansen certified:

“The undersigned hereby certifies that on March 6, 2015 he served, via first class U.S. Mail, the parties listed on the attached Service List with written pre-filing notice of the proposed discontinuance of trackage rights as required by 49 C.F.R. Section 1152.50(d)(1).”

**and in the last paragraph on p. 4 of the Exemption**, where it is stated:

“D&H certifies that the agencies designated in 49 C.F.R. §1152.(d)(1) have been served with written pre-filing notice of the proposed discontinuance of D&H’s trackage rights over the lines that are the subject of this Verified Notice of Exemption.”

B. The D&H’s errors were ‘inadvertent’ and are not ‘material.’

**Response.** Riffin would hope that the omissions were ‘inadvertent’ rather than deliberate. But ‘inadvertent’ mistakes are still unacceptable, particularly when done in large quantities. It strikes Riffin that in the D&H’s efforts to cut its costs, it eliminated a very important position: The position of ‘proof reader’ and ‘fact checker.’ If one is ‘unfamiliar’ with one’s system, perhaps one should ‘become familiar’ with one’s system, before making filings with the STB, particularly filings

that are highly likely to be vigorously contested.

As for ‘material,’ as the STB previously noted in AB-290 (Sub-No. 237X), Served April 3, 2006, a **full Board** decision, leaving out a number of Zip Codes is very ‘material,’ and is sufficient grounds to reject an Exemption. Had the D&H only left out one Zip Code, as was done in AB-369 (Sub-No. 7X), perhaps the omission might have been overlooked. But in this proceeding, at least **thirteen** Zip Codes<sup>2</sup> were omitted, as were **two counties** in the heading. That is an unacceptable number of omissions.

- C. The Office of Proceedings has the discretion to waive some of the requirements in 49 CFR Part 1152, Subpart C, “which contains the notice provisions on which Riffin focuses.” Reply at 5.

**Response:** 49 CFR 1152.50, which the D&H relies upon in its Exemption, **is in Subpart F, NOT in Subpart C.** Riffin focuses on the requirements set forth in 1152.50(d).

- D. “It is undisputed that D&H has moved no local traffic over any of the subject trackage rights in more than two years.” Reply at 5.

**Response:** Whether the D&H has moved local traffic over any of the subject trackage rights **is very much in dispute.** That is the very reason why Riffin served his discovery requests on the D&H, and the very reason why Riffin seeks an order from the STB to compel the D&H to provide Riffin with traffic information, so that Riffin can ascertain whether the D&H is so ‘unfamiliar’ with its system, that it is unaware that local traffic has in fact moved over its trackage rights during the past two years.

---

<sup>2</sup> Riffin only checked the Zip Codes for Maryland and New Jersey. He did not check to see if Zip Codes in Pennsylvania and New York were omitted. He did note that one Zip Code in Virginia may have been omitted, depending on where the D&H’s trackage rights actually terminated. (Within the City of Alexandria?)

E. “D&H believes that it no longer has trackage rights over any of the line segments that have previously been abandoned.” Reply at 5, footnote 2.

**Response:** One has trackage rights until authority to discontinue those trackage rights has been granted. Riffin has been unable to find any D&H trackage rights proceedings wherein the D&H has been granted authority to discontinue any of the trackage rights that are the subject of its Exemption. What Riffin has found, is that during those abandonment proceedings instituted by Conrail, wherein the D&H had trackage rights, the D&H has **vigorously contested** the loss of its trackage rights, and has **adamantly** argued that it would retain its trackage rights following consummation of Conrail’s common carrier rights and obligations over the subject lines. See AB 167 (Sub. No. 451N), Comments of the D&H, appended hereto.

F. “By contrast, there are no potentially affected shippers in the omitted ZIP Codes in this overhead trackage rights discontinuance proceeding.” Reply at 6.

**Response:** Actually there are several ‘potentially affected shippers in the omitted ZIP Codes.’ There is a rock quarry in Zip Code 08826 that desires rail service. The LaFarge cement manufacturing plant in Whitehall, PA, has a strong desire for rail service. There are at least four shippers who desire rail service in the D&H’s Oak Island facility.

G. “Riffin’s Petition to Revoke ... would ... delay without any offsetting benefit to the public.”

**Response:** Any delay in this proceeding is solely due to the carelessness of the D&H, and is due to the D&H’s failure to admit that it made a mistake, withdraw its Exemption, then start the process over again. Had the D&H sufficiently proof-read its Exemption prior to filing it, this proceeding would likely have already concluded.

Riffin tried to ‘be nice.’ Riffin called Karl Hansen, 10 days or so prior to filing his Petition to Revoke. (Around April 10, 2015.) Riffin informed Mr. Hansen that the Exemption omitted numerous ZIP Codes, and told Mr. Hansen about the AB-290 (Sub-No. 237X), Served April 3, 2006, decision. Had Mr. Hansen withdrawn the Exemption, then immediately sent out new notices, and put new advertisements in newspapers, the D&H likely would be only a week or so away from getting the discontinuance authority that it desires. (Sixty days from April 10, 2015, would be June 8, 2015, the very day this Motion to Compel is being filed.) Also, had the Director of the Office of Proceedings followed the dictates of 49 CFR 1152.50(d)(3), and rejected the D&H Exemption, the D&H would be within 30 days or so of having what it sought. Instead, the D&H chose not to ‘own up’ to its mistakes. The Director of the Office of Proceedings chose to try to ‘be nice’ to the D&H. (Instead of ‘being nice,’ the Director instead ‘stuck a knife in the back of the D&H,’ or more precisely, gave Riffin a right he previously did not possess. Had the Director rejected the Exemption, Riffin would have been without a remedy: He would have had precisely what he had requested: Rejection of the Exemption. So much for ‘being nice.’ See also the following paragraph.)

- H. “Riffin’s Petition to Revoke and his Notice of Appeal are both part of a sustained campaign by Riffin to subvert the Board’s rules to inflict undue burden and delay on this transaction and on Norfolk Southern Railway’s (“NSR”) acquisition of the D&H South lines in the hopes that D&H or NSR will give Riffin something to go away.” Reply at 1-2. “As Riffin made abundantly clear in the settlement letter that he filed with the Board ... his ... filings ... are part of an overall campaign to force NSR and D&H to strike a deal with him to go away.” Reply at 9.

**Response:** So much for ‘being nice.’ Riffin knew from the start, that the D&H’s desire to discontinue its trackage rights, would cause much angst. He suggested to Mr. Mullins, that Mr. Mullins should reach out to the Protestants (**all** of them, not just Riffin), to see if he could get the Protestants’ support, just as Mr. Mullins had reached

out to the shippers served by the short-lines that connect to the 282 miles of line that Norfolk Southern desires to acquire. Norfolk Southern elected not to do that.

The STB made some technical errors. Mr. Mullins elected not to advise the STB of its technical errors, and elected not to ask the STB to correct its technical errors.

Those are strategic legal moves consciously made by Norfolk Southern.

The D&H filed its Exemption. It contained numerous technical errors. Riffin told Mr. Hansen about the technical errors. The D&H made the strategic legal decision, **not** to admit its errors. Instead, it elected to argue that it should be ‘excused’ from filing an inherently defective Exemption.

Riffin openly pointed out a way out of the quagmire: Reach out to the Protestants. Get their support. Once again, Norfolk Southern and the D&H made the strategic legal decision to ‘forge ahead.’ “To H\_\_\_ with the Protestants!”

The STB has often expressed its preference that parties settle their differences.

Riffin took the initiative to suggest, very publicly, that the parties make an attempt to settle their differences. For that initiative, both the D&H and Norfolk Southern now seek to bar Riffin from any further proceedings before the STB. See EP 727.

Riffin was bold enough to openly state: “The Emperor has no clothes on.” Since Norfolk Southern and the D&H did not like the messages Riffin delivered, their approach was to ‘kill the messenger.’

A better approach would have been: File error-free pleadings. If a mistake is made, acknowledge the mistake, seek forgiveness, then re-file. Or offer to compromise with one’s opponents. A little humility can go a long way.

Riffin has no interest in ‘go away’ money. He wants to preserve the competitive benefits that result when shippers have the option of two rail carriers. Riffin has two interests: (A) The rail corridor between the D&H’s Oak Island Terminal, and Scranton, PA. If the D&H’s trackage rights are abolished, there will only be one carrier in that corridor: Norfolk Southern. Norfolk Southern has no interest in providing service in this corridor. (The corridor is too short to be sufficiently profitable for Norfolk Southern.) (B) Maryland’s Port’s ability to ship double-stack containers to the Mid-West. Neither Norfolk Southern nor CSX have a viable plan to accommodate Maryland’s Port’s needs. The D&H’s trackage rights in Maryland, if used, could be the basis for a viable plan.

### ARGUMENT

13. When a party fails to timely respond to discovery requests, 49 CFR 1114.31(a) permits a party to seek an order from the STB, which order would compel a party to respond to a discovery request.

14. Since the D&H has failed to timely respond to Riffin’s discovery requests, Riffin seeks an order from the STB, asking the STB to compel the D&H to respond to Riffin’s discovery requests.

15. In a decision served April 30, 2012, in the proceeding entitled *Denver & Rio Grande Railway Historical Foundation D/B/A Denver & Rio Grande Railroad, L.L.C. – Petition for Declaratory Order*, STB Docket No. FD 35496, the Director of the Office of Proceedings made the following ruling:

“DRGHF was served with proper notice of discovery on March 6, 2012, and was given a reasonable time period, 20 days, to respond. In view of its apparent failure to respond in any way to any of Respondents’ joint discovery requests, **there is no need to wait for DRGHF to file a reply to Respondents’ motion to compel.** DRGHF is ordered to respond, as appropriate, to Respondents’ joint discovery requests – whether by providing the requested documents and interrogatory answers, raising objections, or

otherwise – within 7 days from the service date of this decision and simultaneously file with the Board a certification that it has done so.”

**PRAYER FOR RELIEF**

16. WHEREFORE, for the foregoing reasons, Riffin prays that the STB **immediately** issue an order, as it did in FD 35496, without any opportunity for the D&H to reply prior to issuing the order, compelling the D&H to respond to Riffin’s two discovery requests, and for such other and further relief as would be appropriate.

Respectfully,

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of June, 2015, a copy of the foregoing Motion to Compel, was served on the parties noted below, by E-mail.

James Riffin

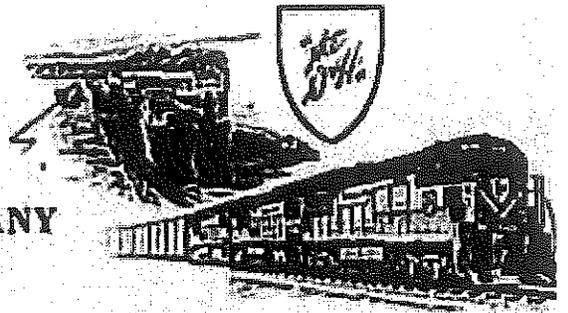
E-mail:

Brotherhood of MOW Employees:	Richard Edelman:	<a href="mailto:REdelman@odsalaw.com">REdelman@odsalaw.com</a>
Brotherhood of Locomotive Engineers & Trainmen:	Kevin Moore:	<a href="mailto:bletdiv191@hotmail.com">bletdiv191@hotmail.com</a>

CNJ / Alma / Pace Glass:	Thomas McFarland:	<a href="mailto:mcfarland@aol.com">mcfarland@aol.com</a>
D&H Railways:	Karl Hansen:	<a href="mailto:karl.hansen@stinsonleonard.com">karl.hansen@stinsonleonard.com</a>
D&H Railways:	David Rifkin:	<a href="mailto:david.rifkin@stinsonleonard.com">david.rifkin@stinsonleonard.com</a>
IAM District Lodge 19:	Jeffrey A. Bartos	<a href="mailto:Jbartos@geclaw.com">Jbartos@geclaw.com</a>
	Kyle A. DeCant	<a href="mailto:Kdecant@geclaw.com">Kdecant@geclaw.com</a>
Genesee & Wyoming, Inc.:	Eric Hocky:	<a href="mailto:ehocky@clarkhill.com">ehocky@clarkhill.com</a>
	Allison M. Fergus:	<a href="mailto:afergus@gwrr.com">afergus@gwrr.com</a>
Maryland DOT:	Charles Spitulnik:	<a href="mailto:cspitulnik@kaplankirsch.com">cspitulnik@kaplankirsch.com</a>
NY DOT:	Keith Martin:	<a href="mailto:keith.martin@dot.ny.gov">keith.martin@dot.ny.gov</a>
National Grain & Feed Assoc:	Randall C. Gordon:	<a href="mailto:ngfa@ngfa.org">ngfa@ngfa.org</a>
National Grain & Feed Assoc:	Thomas Wilcox:	<a href="mailto:twilcox@gkglaw.com">twilcox@gkglaw.com</a>
Norfolk Southern:	Williams Mullins:	<a href="mailto:wmullins@bakerandmiller.com">wmullins@bakerandmiller.com</a>
PPL Energy:	Kelvin Dowd:	<a href="mailto:kjd@sloverandloftus.com">kjd@sloverandloftus.com</a>
PA NE Regional RR Auth:	Lawrence Malski:	<a href="mailto:lmalski@pnrra.org">lmalski@pnrra.org</a>
Saratoga & N. Creek Ry:	John D. Heffner:	<a href="mailto:John.Heffner@strasburger.com">John.Heffner@strasburger.com</a>
Seda-Cog Railroads:	Jeffery K. Stover:	<a href="mailto:jra@seda-cog.org">jra@seda-cog.org</a>
U.S. Clay Producers Assoc:	Vincent P. Szeligo:	<a href="mailto:vszeligo@wsmoslaw.com">vszeligo@wsmoslaw.com</a>
Samuel J. Nasca (SMART):	Gordon P. MacDougall	<a href="mailto:gpmacdo@mindspring.com">gpmacdo@mindspring.com</a>

# DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207



**KINGA M. LACHAPPELLE**  
General Attorney

*Dependable Transportation Since 1823*

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. *Wm*  
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 3 1982

ADMINISTRATIVE SERVICES  
MAY 1981

---

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

---

STATEMENT OF  
DELAWARE AND HUDSON RAILWAY COMPANY

---

Kinga M. LaChapelle  
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 (JR 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 (HERSA) 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 HERSA, and pursuant to HERSA'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.

  
Notary Public  
State of New York

GEORGE H. HERRIN  
Notary Public  
Qualified in the State of New York  
No. 21  
Commission Expires 12/31/83

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of February, 1982, served a copy of the foregoing document upon all parties listed below by first class mail, properly addressed with postage prepaid.

The Honorable, Richard L. Thornburgh  
Governor, Commonwealth of Pennsylvania  
State Capitol  
Harrisburg, PA 17120

Pennsylvania DOT  
1200 Transportation and Safety Bldg.  
Harrisburg, PA 17120

Public Utilities Commission  
P. O. Box 3265  
Harrisburg, PA 17120

Rail Services Planning Office  
1900 L. Street NW  
Washington, DC 20036

Federal Railroad Administration  
400 Seventh Street SW  
Washington, DC 20036

Office of Proceedings, ICC  
12th & Constitution Avenue, NW  
Washington, DC 20423

Director, Extension Service  
Dr. J. M. Benthie  
Agrl. Administration Bldg.  
Pennsylvania State University  
University Park, PA 16802

Department of Interior  
National Park Service  
18th and C Streets, N.W.  
Washington, D.C. 20240

Office of Special Counsel  
Interstate Commerce Commission  
Washington, D.C. 20435

Military Traffic Management Command  
Massif Building - Room 720  
STOP 105 MT-SA  
Washington, D.C. 20315

National Railroad Passenger Corporation  
400 North Capitol Street, N.W.  
Washington, D.C. 20001

Railroad Retirement Board  
844 Rush Street  
Chicago, Illinois 60611

Railway Labor Executives' Association  
Railway Labor Building  
400 1st Street, N.W.  
Washington, D.C. 20001

Charles E. Nechem  
General Attorney  
Consolidated Rail Corporation  
1138 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

Pfizer Company, Inc.  
Lehigh Gap R. D. 4  
Slatington, PA 18080

Prince Manufacturing Company  
700 Lehigh Street  
Bowmanstown, PA 18030

Pennsylvania Plant Food  
Leighton, PA 19235

Eckman Lumber Company  
R. D. #3  
Leighton, PA 18235

H. D. Hartman Lumber  
Blakslee Boulevard  
Leighton, PA 18235

Whitchell Cement Company  
5160 Main Street  
Cementon, PA 18502

H. E. Orkin Company, Inc.  
375 Cherry Street  
Clatington, PA 18080

Blue Rock Materials  
Slatington, PA 18080

A. J. Henry Lumber Company  
50 West Park Avenue  
Slatington, PA 18085

Keystone Lasp Mfg. Company  
R. D. #1  
Clatington, PA 18080

---

Kinga M. LaChapelle

Sworn to before me this  
day of

---

Notary Public  
State of New York