

227375

MAYER • BROWN

Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel +1 202 263 3000
Main Fax +1 202 263 3300
www.mayerbrown.com

Robert M. Jenkins III
Direct Tel +1 202 263 3261
Direct Fax +1 202 263 5261
rmjenkins@mayerbrown.com

July 1, 2010

VIA HAND DELIVERY

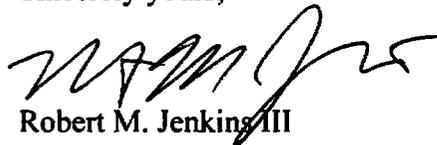
Cynthia T. Brown
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Ex Parte 695 — Consolidated Rail Corporation's
Sales and Discontinuances

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of "Comments of Consolidated Rail Corporation." Please date stamp the extra copy of the filing and return it to our representative. Thank you.

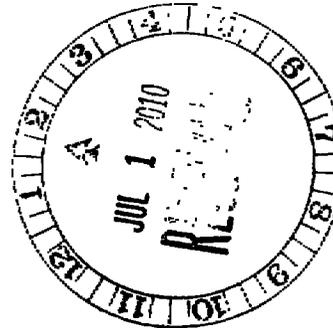
Sincerely yours,



Robert M. Jenkins III

Attorney for Consolidated Rail Corporation

Enclosures



ENTERED
Office of Proceedings

JUL 1 2010

Part of
Public Record

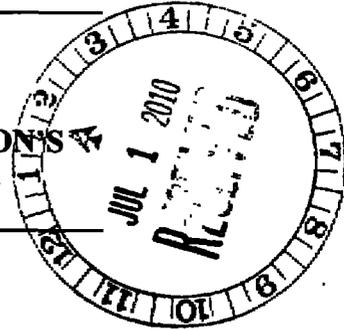
JUL 1 2010

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 695

**CONSOLIDATED RAIL CORPORATION'S
SALES AND DISCONTINUANCES**



**COMMENTS
OF
CONSOLIDATED RAIL CORPORATION**

On November 19, 2008, Consolidated Rail Corporation (“Conrail”) filed a notice of exemption (“NOE”), pursuant to 49 C.F.R. § 1152.50, to abandon a 2.27-mile line of railroad in Hudson County, New Jersey, known as the “Lehigh Valley Main Line” (Milepost 2.9 to Milepost 5.17). In the Environmental and Historic Report accompanying its NOE, Conrail noted that parts of the Line had previously been sold to New Jersey Transit Corporation (“NJ Transit”), among others. After protracted proceedings concerning an offer of financial assistance by Eric Strohmeier and James Riffin, the Board on May 17, 2010, issued a decision exempting the entire Line from 49 U.S.C. § 10904 and holding that Conrail’s abandonment exemption would be effective June 16, 2010. Docket No. AB 167 (Sub-No. 1190X), *Consolidated Rail Corporation—Abandonment Exemption—in Hudson County, N.J.*

By separate decision, also served May 17, 2010, in Ex Parte No. 695, *Consolidated Rail Corporation’s Sales and Discontinuances*, the Board ordered Conrail to provide on July 1, 2010, an explanation for (1) “how and under what authority it came purportedly to transfer title to parts of the Line to NJ Transit” and (2) “when, under what authority, and under what circumstances it

purported to discontinue service on the Line.”¹ Conrail responds here to that order. Conrail’s response is supported by the attached Verified Statement of Robert W. Ryan, who was Director, Real Estate, at Conrail from 1996 to 2009.

Conrail was originally formed by the U.S. government in the mid-1970s from the remains of seven bankrupt northeastern railroads. The Line at issue here was one of thousands of line segments from those railroads that the United States Railway Association (“USRA”) caused to be conveyed to Conrail for purposes of creating an integrated rail system. There was considerable redundancy in track, personnel, equipment, and services among those railroads, and rationalizing the assets Conrail received was a complex task. Ryan VS at 1-2. Conrail was well aware of its obligations to obtain abandonment authority for rail lines, and it worked assiduously to comply with the various regulatory requirements for abandonments and discontinuances. Passage of the Northeast Rail Act of 1981 (“NERSA”) streamlined the abandonment process for Conrail, and it filed over one thousand NERSA abandonment applications in the early 1980s. *Id.* at 2-3. By the late 1990s, when Conrail was sold and largely divided between CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway (“NS”), Conrail was operating approximately 21,000 miles of track (versus approximately 41,000 miles of track conveyed to Conrail by USRA in 1976) and had approximately 20,000 employees (versus approximately 95,000 employees in 1976). Today, Conrail operates 1,212 miles of track and has 1,062 employees. *Id.* at 2.

In response to the Board’s May 17 decision in Ex Parte No. 695, Conrail conducted a thorough review of its remaining records to attempt to determine when service, if any, was

¹ The Board also ordered Conrail to provide a report on August 16, 2010, disclosing any line or partial line sales and discontinuances of service since January 1, 1996, for which no Board authority was sought, as well as an explanation of why Board authority was not sought.

discontinued on the Line at issue, and what was its subsequent disposition. Conrail found no records indicating that service was ever provided by Conrail over the part of the Line at issue here, or that shippers ever requested service over that part of the Line. It appears that from the outset other parallel lines were used to provide service in the area. At some point in the late 1970s and early 1980s, Conrail removed the track and dismantled the remaining bridges south of Milepost 2.9. Ryan VS at 2-3. In November 1981, Conrail filed a NERSA abandonment application for the part of the track that remained between Milepost 2.3 and 2.9. That application represented that Milepost 2.9 was then the “End of the Track.” Ryan VS, App. 1, p. 2. The Interstate Commerce Commission (“ICC”) granted the application. Ryan VS, App. 2.

When Conrail’s Real Estate Department began disposing of the real estate underlying the Line, all of the infrastructure was gone and Conrail’s comprehensive abandonment program under NERSA was over. Conrail made the sales to NJ Transit and others believing that proper abandonment authority for the Line had already been obtained, just as it had been obtained for the trackage between Milepost 2.3 and 2.9. It was not until late 2007, in connection with Conrail’s sale of the last remaining parcel of property on the Line, that Conrail became aware that it had no ready evidence that it had sought and obtained abandonment authority for the Line from the ICC. When Conrail was unable to confirm from its own records or those of the ICC or the Board that it had obtained abandonment authority for the Line, it determined to rectify its apparent mistake by filing its November 2008 NOE for abandonment of the Line. Ryan VS at 3-4.

Thus, in response to the Board’s question “how and under what authority [Conrail] came purportedly to transfer title to parts of the Line to NJ Transit,” Conrail cannot now conclude that it had proper authority to transfer parts of the Line to NJ Transit—at least without retaining an

easement for possible common carrier freight service. Conrail did make those sales in good faith, however, believing that the proper authority had been obtained years earlier. Ryan VS at 4. Further, when Conrail realized its apparent mistake, it filed for the appropriate authority.

As to the Board's question "when, under what authority, and under what circumstances it purported to discontinue service on the Line," it does not appear that Conrail ever served any shippers on the Line. Thus, as a practical matter, no actual service was discontinued. The service needs of shippers in the area appear to have been fully met by other, parallel lines in the area. Ryan VS at 2, 4. Nevertheless, as a formal matter, Conrail should not have salvaged the track and other infrastructure on the Line without first obtaining discontinuance authority. Here again, once Conrail found it could not confirm that such authority had been obtained, it filed for that authority.

In its May 17 decision, the Board noted that there are statutory penalties for a person "knowingly" violating the abandonment authorization requirements of 49 U.S.C. § 10903. Slip op. at 2 (citing 49 U.S.C. § 11901(c)). There is no evidence, however, that Conrail knowingly violated Section 10903 in connection with the Line. As Mr. Ryan recounts in his statement, Conrail had extensive processes in place to handle its abandonment obligations. The sales of parcels to NJ Transit, and to others, were made in the good faith belief that proper abandonment authority had been obtained. Ryan VS at 4. Any mistake in this regard was inadvertent, and Conrail appreciates the Board's willingness to permit Conrail to rectify that mistake by granting

Conrail's NOE for abandonment of the Line.

Respectfully submitted,

John K. Enright
Associate General Counsel
CONSOLIDATED RAIL CORPORATION
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103
(215) 209-5012



Robert M. Jenkins III
Adam C. Sloane
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3261

Dated: July 1, 2010

VERIFIED STATEMENT
OF
ROBERT W. RYAN

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 695

**CONSOLIDATED RAIL CORPORATION'S
SALES AND DISCONTINUANCES**

**VERIFIED STATEMENT
OF
ROBERT W. RYAN**

1. My name is Robert W. Ryan. I was employed in the Real Estate department of Consolidated Rail Corporation ("Conrail") from June 1976 through July 2009. Prior to my employment with Conrail, I was employed in the Real Estate departments of the Pennsylvania Railroad and the Penn Central Transportation Company from 1965 to 1972. My most recent position with Conrail was Director, Real Estate, which I held from October 1996 to July 31, 2009. In that capacity, I had direct responsibility for, or was otherwise involved in, several real estate transactions involving portions of the 2.27-mile Lehigh Valley Main Line (the "Line") in Hudson County, New Jersey (MP 2.9-MP 5.17).

2. By decision served May 17, 2010, in Ex Parte No. 695, the Surface Transportation Board ("STB" or "Board") ordered Conrail to explain "how and under what authority it came purportedly to transfer title to parts of the Line to NJ Transit" and "when, under what authority, and under what circumstances it purported to discontinue service on the Line." Slip Op. at 3. My testimony responds to both of the Board's questions.

3. First, some history is in order. Conrail was formed by the U.S. government in the mid-1970s from the remains of seven bankrupt northeastern railroads pursuant to federal legislation and the Final System Plan developed by the United States Railway Association. The

Line was one of thousands of line segments that Conrail acquired from the trustees of the bankrupt railroads on April 1, 1976. Conrail began with approximately 41,000 miles of track and 95,000 employees; its operations were heavily subsidized by the government in the early years. The task of consolidating and rationalizing the operations, track, equipment, and personnel of seven different rail systems was complex, yet vital to creating a new, financially self-sustaining railroad. Through drastic cost-cutting and the elimination of marginal jobs, lines, and services, Conrail in the 1980s became a profitable railroad. It was returned to the private sector in 1987 through a large public stock offering. In the late 1990s, when Conrail was sold and largely divided between CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway ("NS"), Conrail had approximately 21,000 miles of track and 20,000 employees. Today, Conrail operates as a local switching railroad for CSXT and NS in "Shared Asset Areas" in parts of New Jersey, Philadelphia, and Detroit. It has 1,212 miles of track and 1,062 employees.

4. In response to the Board's questions about discontinuance of service and disposition of the Lehigh Valley Line, I was asked to conduct a thorough review of Conrail's remaining records. We found no records indicating that Conrail ever provided service over the part of the Line at issue here, or that shippers requested service over that part of the Line. At its inception, Conrail acquired multiple parallel lines in the area, and it appears that from the outset other lines were used to provide service to shippers in that area.

5. At some point in the late 1970s and early 1980s, Conrail began to dismantle the remaining bridges and remove the track south of Milepost 2.9. We have aerial photographs from that time period which show that between 1978 and 1984 the infrastructure was largely dismantled. We also have an application that Conrail filed with the Interstate Commerce Commission ("ICC") in November 1981, pursuant to the Northeast Rail Service Act of 1981

("NERSA"), to abandon the part of the track that remained between Milepost 2.3 and 2.9. A copy of that application is attached hereto as Appendix 1. That application represented that Milepost 2.9 was then the "End of Track." App. 1, p. 2. The ICC authorized abandonment of the track between Milepost 2.3 and 2.9 in a decision served February 23, 1982 (attached hereto as Appendix 2). That was one of over a thousand NERSA abandonment authorizations that Conrail received from the ICC in the early 1980s.

6. Conrail began disposing of the real estate underlying the Line in 1986. The various property sales that took place after that time are set forth on the map attached as Exhibit B to the verified statement I submitted to the Board on September 11, 2009, in Docket No. AB-167 (Sub-No. 1190X), in support of the Reply of Consolidated Rail Corporation to Offerors' Answer to Show Cause Order. Exhibit C to that verified statement contains the two deeds by which Conrail transferred two pieces of property between Milepost 2.9 and Milepost 3.1 to New Jersey Transit ("NJT") in 1996 to facilitate construction of its Light Rail System in Northern New Jersey. As Director, Real Estate, I was responsible for oversight or direct handling of the sales by Conrail during that time, including the sales to NJT.

7. These real estate sales took place years after all of the infrastructure had been removed from the Line. They also took place years after Conrail's comprehensive abandonment program under NERSA. When Conrail made these sales, we did so believing that proper abandonment authority had already been obtained for the Line—just as such authority had been obtained for the track between Milepost 2.3 and Milepost 2.9, prior to sales of the underlying real estate to NJT (1994) and the New Jersey Department of Environmental Protection (1990). It was not until late 2007, in connection with Conrail's sale of the last property segment that Conrail still owned on the Line, that we became aware that neither Conrail nor the STB could

locate a record of Conrail receiving abandonment authority for the Line. That is why in 2008 Conrail filed a Notice of Exemption to formally abandon the Line, including all the parts that had already been sold, in Docket No. AB-167-167 (Sub-No. 1190X). We recognized that we appeared to have made a mistake in believing that abandonment authority had previously been obtained for the Line, and we filed the Notice of Exemption in an effort to rectify that apparent mistake.

8. Thus, in response to the STB's question about what authority Conrail claims to have had to transfer full title to parts of the Line to NJT, the answer is that Conrail cannot now conclude that it had proper authority to transfer parts of the Line to NJT in 1996, without at least retaining an easement for freight service until such authority had been obtained. Those sales to NJT, and others, were all made in good faith, however, and once Conrail understood that it had no record of proper authority, we did file for abandonment as soon as practicable.

9. In response to the STB's question about what authority Conrail had to discontinue service, it does not appear from our review of Conrail's records that Conrail ever, as a practical matter, discontinued service to a shipper on the Line. There simply was no demand for service on the Line or objection to its dismantlement and disposition. As noted above, other adjacent lines conveyed simultaneously to Conrail in 1976 appear to have met whatever shipper demand existed in the area. Nevertheless, as a formal matter, removing the infrastructure on the line effectively took it out of service, and Conrail should not have done that without affirming discontinuance or abandonment authority. Here again, once we realized that we could not confirm that such authority had been obtained, we filed for it.

10. Our review of the remaining records shows that from the beginning Conrail always took its regulatory discontinuance and abandonment obligations seriously. It had an

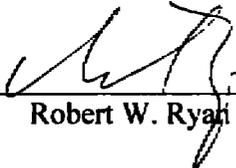
extensive process in place to identify suitable candidates for abandonment and obtain the necessary regulatory authority. Nevertheless, we cannot confirm that Conrail filed for discontinuance and abandonment authority with respect to the Line. We appreciate the STB's willingness to permit us to rectify our apparent mistake by our filing in Docket No. AB-167 (Sub-No. 1190X) and the STB's subsequent decision granting Conrail's Notice of Exemption.

Verification

I, Robert W. Ryan, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on June 29, 2010.



Robert W. Ryan

APPENDIX 1

CONRAIL



November 13, 1981

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Avenues, NW
Washington, DC 20423

Subject: 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 Former LV Main Line Branch
in the State of New Jersey
Docket No. AB 167 (Sub. No. 160 N)

Dear Mrs. Mergenovich:

Enclosed for filing with the Commission are the original
and six copies of the above described application. This
application is submitted under Section 308 of the Regional
Rail Reorganization Act of 1973, as enacted by Section 1156
of the Northeast Rail Service Act of 1981.

Copies of the application have been served on the
agencies and major shippers 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. MECHEM
General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19104
(215) 977-5017

cc: D. M. Mazur
T. H. Ramsey
CEM:em C. A. Bassani
B. P. O'Connor

from
G. M. Williams, Jr. 11/24/81

CONSOLIDATED RAIL CORPORATION

Page 2

cc: The Honorable Brendan T. Byrne
Governor, State of New Jersey
State House
Trenton, NJ 08625

New Jersey DOT
1035 Commerce Street
Trenton, NJ 08625

NJ Board of Public Utility Commissioners
101 Commerce Street
Newark, NJ 07102

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. L. Gerwig
Rutgers State University
Box 231, Cook Campus
New Brunswick, NJ 08903

Bureau of Outdoor Recreation
U.S. Dept. of Interior
18th & Constitution, NW
Washington, DC 20240

Office of the Special Counsel
Interstate Commerce Commission
Washington, DC 20423

Military Traffic Management
Command - Nassif Bldg. Room
720 STOP 105 MT-SA
Washington, Dc 20315

Page 3

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

Railroad Retirement Board
824 N. Bush Street
Chicago, Illinois 60611

Railway Labor Executives Assoc.
Railway Labor Building
400 1st Street, NW
Washington, DC 20001

SHIPPERS AND OTHER INTERESTED PARTIES

Ampol Wrecking & Dis.
274 Communipaw Avenue
Jersey City, NJ 07304

Garden State Warehouse
300 Communipaw Avenue
Jersey City, NJ 07304

Transoenvélope Company Dist.
100 Monitor Street
Jersey City, NJ 07304

Schiavone-Bonomo Corporation
Foot of Jersey Avenue
Jersey City, NJ 07302

Before The
Interstate Commerce Commission

Application of Consolidated Rail :
Corporation Pursuant to Sections :
308(a) and (b) of the Regional Rail :
Reorganization Act of 1973, As :
Amended by Section 1156 of the :
Northeast Rail Service Act of 1981, : Docket No. AB 167
for Approval of the Abandonment of : (Sub. No. 160 N)
the Former LV Main Line Branch :
in Hudson County, State of :
New Jersey :

Charles E. Mechem
General Attorney
1138 Six Penn Center
Philadelphia, PA 19104
(215) 977-5017

November 13, 1981

Before The
Interstate Commerce Commission

Application of Consolidated Rail :
Corporation Pursuant to Sections :
308(a) and (b) of the Regional Rail :
Reorganization Act of 1973, as :
Amended by Section 1156 of the :
Northeast Rail Service Act of 1981, : Docket No. AB 167
for Approval of the Abandonment of : (Sub No. 167N)
the Former LV Main Line Branch :
in Hudson County, State of :
New Jersey :

To the Interstate Commerce Commission, Washington D.C.:

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 19104.

2) Applicant is a common carrier by railroad subject to the former Interstate Commerce Act (now 49 USCA Subtitle IV) and to the Northeast Rail Service Act of 1981 (NERSA).

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

4) By this application Conrail requests the Commission's approval of the abandonment of the line of rail described below;

Name Of Line: Former LV Main Line Branch

State in which located: State of New Jersey

County or Counties: Hudson County

<u>Limits of proposed</u>	Jersey City	End of Track
<u>Abandonment:</u>	Milepost 2.3	Milepost 2.9

Length of line: 0.6 miles

The above-described line will hereafter be referred to as the Subject Line.

5) Attached as EXHIBIT B is a map showing the location of the Subject Line.

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 Line, and (c) an estimate of the subsidy that would be required to keep the line in operation. Exhibit C includes an estimate of the cost of the work that would be required to preserve the Subject Line in FRA Class 1 condition. Attached hereto as Exhibit D is an estimate of the value of the Subject Line, including the real estate value of the underlying right-of-way. Pursuant to Section 308(d) of the RRR 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 line 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 line, together with any adjustments to the estimated subsidy that may be necessitated by the appraisal.

9) All requests for information specified in paragraphs 6, 7, and 8 should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, Pa. 19104. Copies of such requests should be sent to the Office of Proceedings, Room 4126, Interstate Commerce Commission, Washington, DC 20423.

10) Recipients of this application are advised that the staff of the Interstate Commerce Commission has notified Conrail that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act may contact either the ICC Section of Finance (telephone 202-275-7245) or the Section of Rail Services Planning (telephone 202-275-0826).

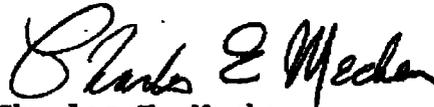
11) Conrail believes that the environmental and EPCA requirements of 49 C.F.R. Sections 1108.7(c) and 1106.5(c) are inapplicable to proceedings under Sections 308(a) and (b) of the RRR Act inasmuch as the Commission is neither permitted nor required to exercise any judgment or discretion in acting upon such applications* but rather is required to approve them except when subsidy offers meeting the requirements of 49 USCA Section 10905 have been tendered. In any event, the proposed abandonment is not expected to have any significant impact or effect on (a) transportation patterns, (b) local or regional land use plans, (c) coastal zone management areas, (d) wet lands, flood plains, or agricultural lands, (e) the development or transportation of energy resources, (f) the movement or recovery of recyclables, (g) energy consumption or distribution, (h) motor truck traffic on public highways, (i) wildlife, (j) National or state parks or forests, (k) historic structures, (l) water courses or water supply, (m) culturally significant locations, or (n) public safety.

Accordingly, applicant believes that approval of the proposed abandonment will not constitute a major Federal action having a significant effect on the quality of the human environment.

* See Commonwealth of Pennsylvania, et al v. Federal Maritime Commission, et al, 393 F.Supp. 795 (1975).

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

Respectfully submitted,

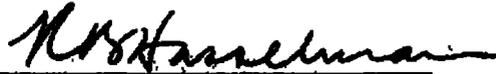


Charles E. Mechem
Counsel for
Consolidated Rail Corporation
1168 6 Penn Center Plaza
Philadelphia, PA 19104
(215) 977-5017

VERIFICATION

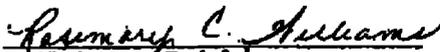
Commonwealth of Pennsylvania: :
County of Philadelphia :

R. B. Hasselman makes oath and says that he is Senior Vice President, Operations 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.



R. B. Hasselman

Sworn to and subscribed
Before me this 11th day
of November, 1981.



Notary Public

ROSEMARY C. WILLIAMS
Notary Public, Phila., Phila. Co.
My Commission Expires May 2, 1983

ABANDONMENTS

Sec. 1156. (a) Title III of the Regional Rail Reorganization Act of 1973 is amended by adding at the end thereof the following new section:

"ABANDONMENTS

"Sec. 308. (a) GENERAL.—The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49, United States Code.

"(b) APPLICATIONS FOR ABANDONMENT.—Any application for abandonment that is filed by the Corporation under this section before December 1, 1961, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.

"(c) NOTICE OF INSUFFICIENT REVENUES.—(1) The Corporation may, prior to November 1, 1983, file with the Commission a notice of insufficient revenues for any line which is part of the system of the Corporation.

"(2) At any time after the 90-day period beginning with the filing of a notice of insufficient revenues for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.

"(d) OFFERS OF FINANCIAL ASSISTANCE.—(1) The provisions of section 10903 (d)-(f) of title 49, United States Code (including the timing requirements of subsection (d) thereof), shall apply to any offer of financial assistance under subsection (b) or (c) of this section.

"(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

"(e) LIQUIDATION.—(1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.

"(2) Appraisals made under paragraph (1) shall not be appealable.

"(3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

"(B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 6 months if he assumes all liability of any sort related to such property.

"(4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any track liquidation shall be paid into the general fund of the Treasury of the United States.

"(f) EMPLOYEE PROTECTION.—The provisions of section 10903(b)(2) of title 49, United States Code, shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of title V of this Act immediately prior to the effective date of the Northeast Rail Service Act of 1961, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 701 of this Act."

"(b) The table of contents of the Regional Rail Reorganization Act of 1973, as amended by this subtitle, is further amended by inserting immediately after the item relating to section 307 the following new item:

"Sec. 308. Abandonments."

EXCERPTS FROM
49 USCA 10905

EXHIBIT A
Page 2

(d) If, within 15 days after the publication required in subsection (c) of this section, the Commission finds that—

(1) a financially responsible person (including a government authority) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, and

(2) it is likely that the assistance would be equal to—

(A) the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or

(B) the acquisition cost of that part of the railroad line; the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance in accordance with subsections (e) and (f) of this section.

(e) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate for so long as the agreement, or an extension or modification of the agreement, is in effect. If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission shall approve the transaction and dismiss the application for abandonment or discontinuance. If the carrier and a financially responsible person (including a government authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made,

request that the Commission establish the conditions and amount of compensation. If no agreement is reached within 30 days after the offer is made and neither party requests that the Commission establish the conditions and amount of compensation during that same period, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance.

(f)(1) Whenever the Commission is requested to establish the conditions and amount of compensation under this section—

(A) the Commission shall render its decision within 60 days;

(B) where subsidy has been offered, the Commission shall determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line; and

(C) where an offer of purchase has been made in order to continue rail service on the line, the Commission shall determine the price and other terms of sale. In no case shall the Commission set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services).

(2) The decision of the Commission shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Commission's decision. In such a case, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance, unless other offers are being considered pursuant to paragraph (3) of this subsection.

(3) If a carrier receives more than one offer to purchase or subsidize, it shall select the offeror with whom it wishes to transact business, and complete the sale or subsidy agreement, or request that the Commission establish the conditions and amount of compensation prior to the 40th day after the date on which notice was published under subsection (c) of this section. If no agreement on subsidy or sale is reached within the 40-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request that the Commission establish the conditions and amount of compensation. If the Commission has established the conditions and amount of compensation and the original offer has been withdrawn, any other offeror may accept the Commission's decision within 20 days of such decision, and the Commission shall require the carrier to enter into a sale or subsidy agreement with such offeror, if such sale or agreement incorporates the Commission's decision.

(4) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

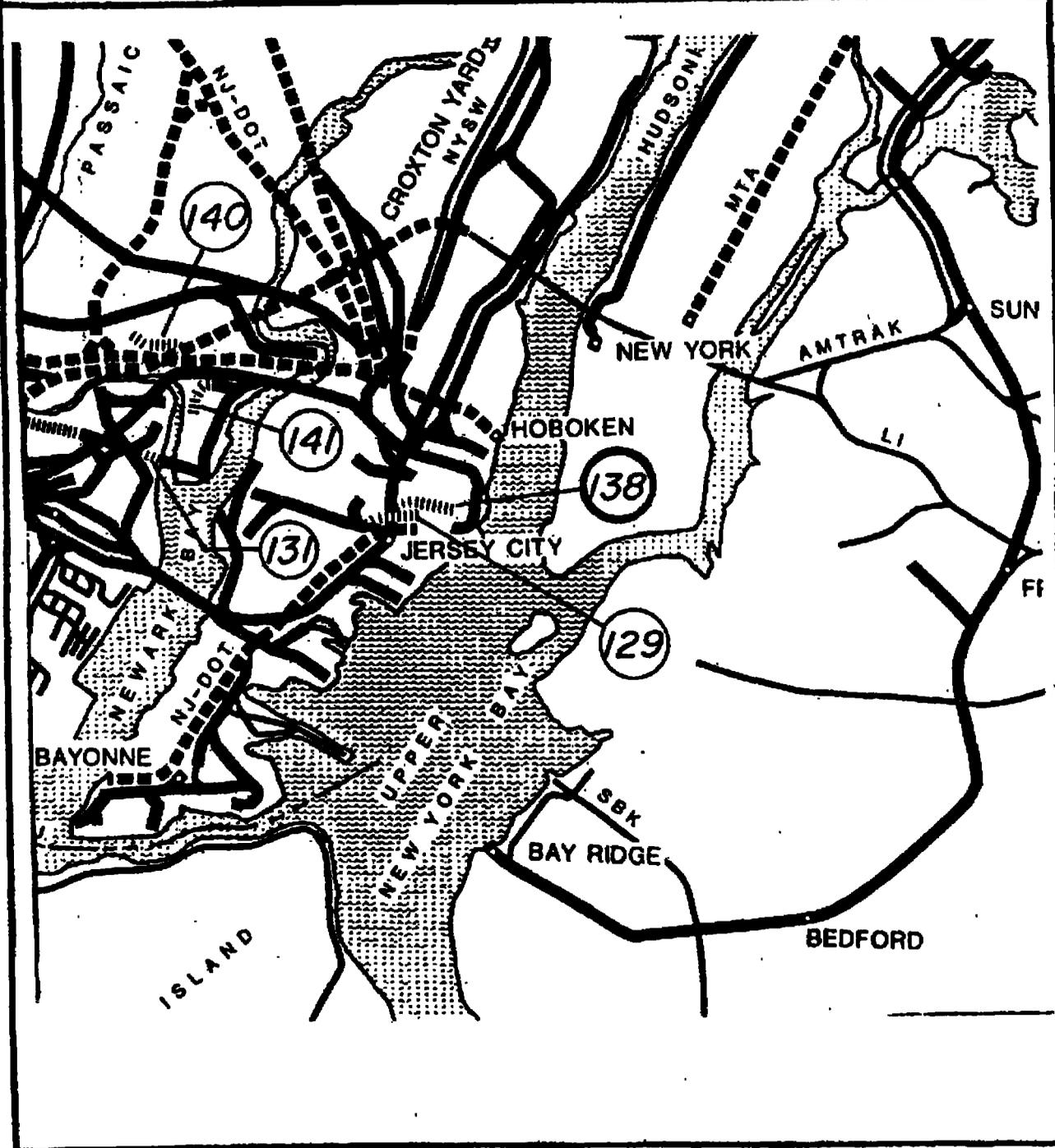
(5) Any subsidy provided under this section may be discontinued on notice of 60 days. Unless, within such 60-day period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was or was to be discontinued, the Commission shall, at the carrier's request, immediately issue a certificate authorizing the abandonment or discontinuance of service on the line.

AREA MAP

CONSOLIDATED RAIL CORPORATION

FORMER LEHIGH VALLEY MAIN

Jersey City (Jersey Ave.), MP 2.3 to End of Track, MP 2.9



**REVENUE AND COST DATA'
CONSOLIDATED RAIL CORPORATION**

FORMER LEHIGH VALLEY MAIN
Jersey City (Jersey Ave.), MP 2.3, to End of Track, MP 2.9

LINE NO.		BASE YEAR 1/1/80 - 12/31/80	ESTIMATED SUBSIDY 1/1/80 - 12/31/80	
1.	Freight revenue originated/terminated on branch	\$	\$	
2.	All other revenue and income	_____	_____	
3.	Total revenues attributable		No service requested or provided during calendar year 1980. Line out of service, with no active shippers.	
Avoidable Costs-On-Branch				
4. a.	Maintenance of way and structures			
b.	Maintenance of equipment			
c.	Transportation			
d.	General administration			
e.	Freight car costs			
f.	Revenue taxes ¹			
g.	Property taxes ²	_____		
	Total on-branch costs	_____		
5.	Off-branch costs	_____	_____	
6.	Total avoidable costs	_____	_____	
Subsidization Costs				
7.	Rehabilitation			
8.	Administrative costs			
9.	Casualty reserve account		_____	
10.	Total subsidization costs		_____	
Return on Valuation				
11. a.	Working capital			
b.	Net liquidation value ⁴			_____
	Total valuation of property			_____
12.	Rate of return			12.1%
13.	Total return on value			
Avoidable Loss				
14. a.	Avoidable loss from operations			
b.	Opportunity costs	_____		
c.	Total avoidable loss	\$		
15.	Estimated subsidy		\$	

REVENUE AND COST DATA
CONSOLIDATED RAIL CORPORATION

FORMER LEHIGH VALLEY MAIN
Jersey City (Jersey Ave.), MP 2.3, to End of Track, MP 2.9

Notes to revenue and cost data:

- 1/ Calculated using the cost methodologies and standards prescribed by 49 CFR Part 1121, as modified by the Commission in Finance Docket 29623, expressed in 1980 dollars.
- 2/ Conrail has elected not to show revenue taxes paid in 1980 in order to properly reflect the exemption from such state taxes provided to the Corporation by Section 217(c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981.
- 3/ Conrail has elected not to show property taxes levied by States and paid in 1980 in order to properly reflect the exemption from such state taxes provided to the Corporation by Section 217(c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. Property taxes shown are only those imposed by political sub-divisions of States, and which are not subject to the exemption.
- 4/ See Exhibit D of this application for an explanation of the basis for establishing the net liquidation value.

**PROJECTED SUBSIDY ESTIMATE
CONSOLIDATED RAIL CORPORATION**

FORMER LEHIGH VALLEY MAIN
Jersey City (Jersey Ave.), MP 2.3, to End of Track, MP 2.9

LINE NO.		ESTIMATED SUBSIDY 1/1/82 - 12/31/82
1.	Freight revenue originated/terminated on branch	\$
2.	All other revenue and income	_____
3.	Total revenues attributable	
Avoidable Costs		No service requested or provided during calendar year 1980. Line out of service, with no active shippers.
4. a.	Maintenance of way and structures	
b.	Maintenance of equipment	
c.	Transportation	
d.	General administration	
e.	Freight car costs	
f.	Revenue taxes	
g.	Property taxes	
	Total on-branch costs	
5.	Off-branch costs	_____
6.	Total avoidable costs	_____
Subsidization Costs		
7.	Rehabilitation	
8.	Administrative costs	
9.	Casualty reserve account	_____
10.	Total subsidization costs	_____
Return on Valuation		
11. a.	Working capital	
b.	Net liquidation value	_____
	Total valuation of property	
12.	Rate of return	12.1%
13.	Total return on value	
	Projected subsidy estimate	\$

**PROJECTED SUBSIDY ESTIMATE
CONSOLIDATED RAIL CORPORATION**

FORMER LEHIGH VALLEY MAIN
Jersey City (Jersey Ave.), MP 2.3, to End of Track, MP 2.9

Notes to projected subsidy estimate:

Subsidy Estimate Methodology

The projected subsidy estimate for 1982 is calculated by indexing the 1980 subsidy estimate from Exhibit C, page 1, forward to 1982 dollars, assuming that 1982 traffic volume, service frequency, and operating patterns are identical to those of 1980. The indexing factors used are a composite of: (1) factors representing the revenue and cost inflation and/or increase experienced by Conrail since 1980; and (2) factors which Conrail is using in developing its 1982 Budget which represent the anticipated continuation of revenue and cost inflation and/or increase that flows from labor agreements, increases in material prices and planned or projected rate increases.

Subsidy Provisions

The projected subsidy estimate for 1982 provided in this Exhibit is precisely that--an estimate. In fact, subsidizers are required to provide financial assistance on the basis of actual revenues, avoidable costs and return on value as prescribed by 49 CFR, Part 1121. Actual subsidy payments could therefore be higher or lower than the estimate, depending on actual traffic volumes, costs and revenues experienced during the subsidy period.

The volume of traffic actually experienced during the subsidy period is thus a determinant of the subsidy payment. By assuming a 1982 traffic volume equal to that of 1980, Conrail is implicitly assuming an appropriate shipper cooperation with the subsidizer in maintaining traffic volume as a means of minimizing the subsidy payments. However, the general trend of traffic on lines proposed for abandonment is downward and potential subsidizers should expect actual payments to be in excess of the subsidy estimate where shipper commitments to maintain 1980 volume levels are not forthcoming.

Docket AB-167

Sub. No. 166

Exhibit D

**PRELIMINARY ESTIMATE OF
NET LIQUIDATION VALUE***
CONSOLIDATED RAIL CORPORATION

FORMER LEHIGH VALLEY MAIN
Jersey City (Jersey Ave.), MP 2.3 to End of Track, MP 2.9

1.	Gross track salvage	\$ 27,105
2.	Takeup costs:	
a.	Common track	12,296
b.	Turn outs	1,527
c.	Road crossing restoration	1,142
3.	Total takeup costs	<u>14,965</u>
4.	Net track salvage	12,140
	(line 1 less line 3)	
5.	Gross salvage - communications and signals	7,131
6.	Cost to remove	<u>2,316</u>
7.	Net communications and signal salvage	4,815
	(line 5 less line 6)	
8.	Net bridge and building salvage	<u>---</u>
9.	Total net salvage value	16,955
	(sum of lines 4, 7 and 8)	
10.	Estimated value of underlying real estate	<u>837,000</u>
11.	Estimated Net Liquidation Value	\$ <u>853,955</u>
	(line 9 plus line 10)	

*Inventory of salvageable materials developed by on-site inspection and valued using recent fair market prices for like materials. Real estate estimates are appraisals performed under the direction of the United States Railway Association for use in valuing the Conrail properties as of April 1, 1976, adjusted forward to reflect subsequent changes in real estate values. Conrail will provide a current appraisal of the value of the real estate underlying the subject line to any financially-responsible party expressing an interest in subsidizing or purchasing said line within 45 days of receiving a request for a current appraisal

**PRELIMINARY ESTIMATE OF
 NET LIQUIDATION VALUE***
CONSOLIDATED RAIL CORPORATION

FORMER LEHIGH VALLEY MAIN *NG*
 Jersey City (Jersey Ave.), MP 2.3, to End of Track, MP 2.9

1.	Gross track salvage	\$ 27,105
2.	Takeup costs:	
a.	Common track	12,296
b.	Turn outs	1,527
c.	Road crossing restoration	1,142
3.	Total takeup costs	14,965
4.	Net track salvage	12,140
	(line 1 less line 3)	
5.	Gross salvage - communications and signals	7,131
6.	Cost to remove	2,316
7.	Net communications and signal salvage	4,815
	(line 5 less line 6)	
8.	Net bridge and building salvage	---
9.	Total net salvage value	16,955
	(sum of lines 4, 7 and 8)	
10.	Estimated value of underlying real estate <i>as appraised**</i>	16,000
11.	Estimated Net Liquidation Value	\$ 32,955
	(line 9 plus line 10)	

*Inventory of salvageable materials developed by on-site inspection and valued using recent fair market prices for like materials. Real estate estimates are appraisals performed under the direction of the United States Railway Association for use in valuing the Conrail properties as of April 1, 1978, adjusted forward to reflect subsequent changes in real estate values. Conrail will provide a current appraisal of the value of the real estate underlying the subject line to any financially-responsible party expressing an interest in subsidizing or purchasing said line within 45 days of receiving a request for a current appraisal.

**This Exhibit has been revised to show on Line 10 the value of the underlying real estate that resulted from a current appraisal undertaken per the terms of the above footnote. This revision also impacts the subsidy estimates shown in Exhibit C by altering the base on which the return on value is calculated. The revised subsidy estimate for 1982 is \$0 reflecting the line's out of service status.

APPENDIX 2

RB2

INTERSTATE COMMERCE COMMISSION
CERTIFICATE AND DECISION

SERVICE DATE

FEB 23 1982

Docket No. AB-167 (Sub-No. 160)N

CONRAIL ABANDONMENT IN JERSEY CITY, NJ

Decided: February 9, 1982

On November 16, 1981, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973^{1/} to abandon 0.6 miles of its rail line between Jersey Avenue (milepost 2.3) and end of track (milepost 2.9) in Jersey City, Hudson County, NJ.

Under section 308(b) the Commission must grant any application for abandonment filed by Conrail before December 1, 1981, 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. Because no offer of financial assistance has been received, the application is granted.

Congress has directed the Commission to appraise the net liquidation value of each Conrail line being abandoned. Under Section 308(e) any interested party would be able to purchase such a line at 75 percent of the value set by the Commission.

With its application Conrail submitted a statement that its estimate of the line's net liquidation value is \$853,955.

The Commission intends to adopt this estimate unless, within 15 days from date of service of this order, an interested party requests that the Commission independently appraise the line. If such a request is made, the Commission will, as soon as practicable, set a value for the line based on any information available. That determination will be published in the Federal Register and is not appealable. If no request is made the Commission will publish Conrail's estimate in the Federal Register.

If any interested parties have pertinent data on the net liquidation value of this line, they should submit it to the Commission's Section of Finance, Room 5414, 12th and Constitution Ave., NW., Washington, DC 20423.

^{1/} This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-35.

Docket No. AB-167 (Sub-No. 160)N

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

It is ordered:

The certificate and decision is effective upon service.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

(SEAL)

Agatha L. Mergenovich
Secretary