

September 2, 2004

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

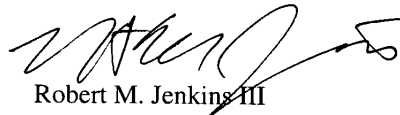
Re: STB Finance Docket No. 34514
Raritan Central Railway, L.L.C. -- Operation
Exemption -- Heller Industrial Parks, Inc.

Dear Secretary Williams:

On August 31, 2004, Petitioners filed with the Board their Supplemental Petition to Revoke Exemption and Appendix thereto. Simultaneously, Petitioners filed a Consent Motion for Extension of Time, to September 2, 2004, to file the Public Version of the Supplemental Petition. Petitioners explained in that motion that its purpose was to provide counsel for Raritan Central Railway, L.L.C., time to designate the portions of the Supplemental Petition that Raritan regards as Confidential and subject to redaction under the terms of the Protective Order entered in this proceeding on July 28, 2004.

Petitioners have redacted material on pages 8 and 9 of the Supplemental Petition, as requested by Raritan, and Petitioners are filing herewith an original and ten copies of the Public Version of the Supplemental Petition. Please date-stamp the enclosed extra copy and return it with our representative.

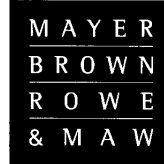
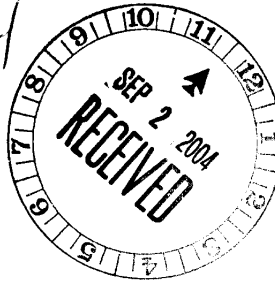
Respectfully submitted,


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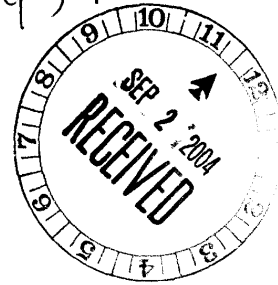
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PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34514

RARITAN CENTRAL RAILWAY, L.L.C.
-- OPERATION EXEMPTION --
HELLER INDUSTRIAL PARKS, INC.



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SUPPLEMENTAL PETITION
TO REVOKE EXEMPTION

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BEFORE THE
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STB FINANCE DOCKET NO. 34514

RARITAN CENTRAL RAILWAY, L.L.C.
-- OPERATION EXEMPTION --
HELLER INDUSTRIAL PARKS, INC.



**SUPPLEMENTAL PETITION
TO REVOKE EXEMPTION**

Pursuant to 49 U.S.C. § 10502(d), 49 C.F.R. § 1121.2, and the Board's decision served in this proceeding on August 12, 2004, Consolidated Rail Corporation ("Conrail"), CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Railway Company ("NS") (collectively, "Petitioners") file herewith their Supplemental Petition to Revoke Exemption.

Introduction and Summary

In their Petition to Revoke filed July 7, 2004, Petitioners explained why, on its face, this case raises substantial factual and legal issues that merit "a more searching process" – whether through a petition for an individual exemption under 49 C.F.R. § 1121 or a full application under 49 C.F.R. § 1150 – than is possible in a 7-day notice proceeding under 49 C.F.R. § 1150.41. *See Jefferson Terminal R.R. Co. – Acquisition and Operation Exemption – Crown Enterprises, Inc.*, STB Finance Docket No. 33950 (served March 19, 2001), slip. op. at 5. The discovery Petitioners have conducted since that time has provided ample evidence that a more thorough proceeding is required to determine whether the Board should permit the operation of the Raritan Central Railway Company at Heller Park to qualify as a jurisdictional common carrier operation or whether the Board should deem it a non-jurisdictional contract switching operation.

As discussed in Petitioners' July 7 Petition to Revoke Exemption, the standard for revocation under 49 U.S.C. § 10501(d) is whether it is "necessary to carry out the transportation policy of section 10101 [the Rail Transportation Policy]." July 7 Petition at 3. The importance of promoting competition is highlighted repeatedly in the Rail Transportation Policy:

"(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail; ...

(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes; [and]

(12) to prohibit predatory pricing and practices, to avoid undue concentration of market power, and to prohibit unlawful discrimination....

The Board and its predecessor, the Interstate Commerce Commission, have long stressed that the competitive mandate under the Rail Transportation Policy requires avoiding regulatory action that could diminish competition by creating "2-to-1" points where shippers lose existing intramodal competition, *see, e.g., Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 252, 390-93 (1996). The Board has also emphasized that its mandate to preserve competition extends beyond the merger context to all of its regulatory activities, *see, e.g., Waterloo Ry. – Adverse Abandonment – Lines of Bangor and Aroostook R.R.*, STB Docket No. AB-124 (Sub-No. 2) (served May 3, 2004), slip op. at 5-6.

This is not an isolated case, but one that has significant transportation policy implications throughout the Northeast United States. It has particular importance for Petitioners' operations in the Shared Assets Areas ("SAAs") created by the Conrail control transaction. *See CSX Corp., et al. – Control and Operating Leases/Exemptions – Conrail Inc., et al.*, 3 S.T.B. 196, 228, 247-48, 333 ("*Decision No. 89I*") . That transaction was purposefully structured to reintroduce

“head-to-head two railroad competition” in broad areas of the Northeast that had seen only one-carrier service for decades, by giving shippers in those areas a choice of direct through service from either CSXT or NS, with Conrail providing neutral origination and termination services in the SAAs.

In approving the Conrail control transaction, the Board said: “The most important public benefit resulting from the transaction will be a substantial increase in competition by allowing both CSX and NS to serve where only Conrail served before.” 3 S.T.B. at 333. The Board emphasized that before the Transaction, “Conrail was a ‘bottleneck’ carrier for most through shipments moving to or from this area. Now CSX and NS will directly compete with each other in important markets where Conrail did not compete with other railroads before.” *Id.* at 247.

Raritan’s efforts to obtain authority to operate as a jurisdictional common carrier in Heller Park, in the North Jersey SAA, would, for the shippers involved, negate that “most important public benefit” by *reintroducing* a bottleneck carrier between the customer locations in Heller Park and the two competing Class I carriers. It would effectively create new “2-to-1” points at those locations, contrary to the Board’s strong and longstanding policy against doing so. *See, e.g., Union Pacific -- Control -- Missouri Pacific*, 366 I.C.C. 462, 538-39 (1982) (UP/MP/WP) (“A carrier with a destination monopoly will likely push the through rate as high as possible and keep the monopoly profits to itself by playing off the competing connecting carriers against one another in setting divisions. . .”). *See also Decision No. 89*, 3 S.T.B. at 248 (STB’s “use of the one-lump theory has been judicially approved, and we will not go back over that ploughed ground here. *See Western Resources, Inc. v. STB*, 109 F.3d 782 (D.C. Cir. 1997).”). Furthermore, as detailed below, the evidence discovered so far leaves no doubt that being able to

operate and price its services as a bottleneck common carrier is precisely Raritan's intent and objective.

No such effects would result, however, if Raritan performs its switching operations at Heller Park solely as a non-jurisdictional contract carrier, which would preserve customers' ability to establish by negotiation the terms and tenure of Raritan's services to them. In that circumstance, the direct marketing and billing relationship between NS or CSXT and the shippers would not change. NS and CSXT would still compete head-to-head for their business, and Raritan would have no ability to exploit that competition for its own benefit rather than for the benefit of the shippers.

Indeed, it is noteworthy that Raritan's own affiliate, the New Jersey & Northern Railroad, provides exclusive switching service as a contract carrier in a larger industrial park in New Jersey, which is not in the SAAs. Although the New Jersey & Northern Railroad holds itself out as serving all shippers in the park, it has never applied to operate as a common carrier in that park, and Raritan's President has conceded that Raritan can provide the same service in Heller Park as a contract carrier as it can as a jurisdictional contract carrier.

In that regard, there is no basis whatever for Raritan's claim that the issues in this case only concern the parties' respective private interests and do not concern the "public interest in the form of rail service needs to the public" Raritan Stay Reply (filed June 24, 2004) at 8. As noted earlier, the direct NS-CSXT competition that Raritan's efforts would negate was described by the Board as "[t]he most important *public* benefit resulting from [the Conrail] transaction" 3 S.T.B. at 333 (emphasis added).

Nor is there any basis for Raritan's claim that the case involves only the substitution of service by one carrier, Raritan, for service by another carrier, Conrail, without any change in the

nature of the carriers' services. Raritan Reply to Petition to Revoke (filed July 27, 2004) at 7. Although the nature of the operations may not change, if Raritan operates as an independent common carrier, the *economics* of the service will change fundamentally, to the detriment of rail competition and the shippers. To ensure that the benefits of the new NS-CSX competition in the SAAs would be fully effective and preserved, the Conrail control transaction was carefully structured to provide that Conrail would *not* function as an independent carrier in those areas and would *not* have any marketing or ratemaking functions in those areas. Instead, Conrail operates in the SAAs strictly as a neutral arm of whichever of the two carriers, NS or CSX, wins the business of the shipper. It does not appear in the routings for movements to or from the SAAs, it does not market or charge shippers for its services, and it is neutral and transparent to the line-haul carriers and shippers. In contrast, if Raritan operates in Heller Park as a common carrier, it would unilaterally establish and collect rates for its services, and the evidence adduced in discovery makes clear that Raritan intends to exercise that privilege to the full extent that its bottleneck position will permit.

Discussion

In keeping with the expedited nature of revocation proceedings, Petitioners conducted limited document discovery against Raritan and took one deposition – of Raritan's President, Eyal Shapira.¹ That was enough to provide substantial evidence on two crucial issues: (1) if

¹ Petitioners are separately lodging Mr. Shapira's deposition transcript and exhibits with the Board as an Appendix to this Supplemental Petition. The transcript is referenced herein as "Shapira Dep." and the exhibits are referenced as "Shapira Exh." Documents referenced herein that were not attached as exhibits to the Shapira deposition transcript are attached to this Supplemental Petition as "Supp. Pet. Exh."

Raritan has designated the Shapira deposition and exhibits thereto as "Confidential," within the meaning of the Protective Order entered by the Board on July 28, 2004. Accordingly,
(cont'd)

granted common carrier status for its Heller Park operations, Raritan has the capacity, and intention, to use that status at Heller Park to exploit its position as a bottleneck carrier; and (2) the switching service Raritan is providing at Heller Park is no different from service performed by one of its affiliates elsewhere as a contract switcher; thus, revoking Raritan's common carrier exemption would not mean that Raritan would be foreclosed from serving Heller Park, but only that it do so as a contract switcher.

I. The Evidence Developed To Date Indicates That, Given Common Carrier Authority, Raritan Can, And Will, Exercise Its Market Power As A Bottleneck Carrier at Heller Park.

Raritan does not deny that its operation as a common carrier at Heller Park would create a "2-to-1" point, but it claims that it is "absurd" for Petitioners to assert that this could diminish competition, assertedly because Raritan is "a miniscule entrepreneur-owned operation," Raritan July 27 Reply at 7. It is not the size of the bottleneck, however, that creates the problem. *Cf. Burlington N. & S.F. Ry. – Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights*, STB Docket No. 33740 (served May 13, 2003) (addressing regulatory issues resulting from Class III railroad's assertion of common carrier interchange rights regarding a quarter-mile stretch of track). A bottleneck carrier is able to exert its economic clout regardless of whether the carrier operates over one mile of track or fifty. If Raritan is able to insist on a common carrier interchange at Heller Park, the only constraint on what it can charge for its services, however "miniscule" those services may be, is market demand.

(... cont'd)

Petitioners are filing both the deposition and this Supplemental Petition under seal. By agreement with counsel for Raritan, Petitioners are also simultaneously filing a "Consent Motion for Extension of Time to File Public Version of Supplemental Petition to Revoke Exemption," to give counsel for Raritan the opportunity to review the Supplemental Petition and determine what, if any, redactions are required for the Public Version.

Raritan professes that it “intends to work with both CSXT and NS to handle current traffic and develop new business,” Raritan July 27 Stay Reply at 7, and “intends to offer customers nondiscriminatory access to both NS and CSXT,” Raritan June 24 Stay Reply at 8. Self-serving statements by Raritan of its non-discriminatory intentions are of little value; what is telling is what Raritan has said directly to NS and CSXT in its business dealings with them. Those statements make clear, first, that Raritan is quite cognizant that, given common carrier authority to serve Heller Park, it will be the only carrier with direct access to the park and will displace the previous direct two-carrier access by CSXT and NS, and, second, that Raritan has every intention of using its leverage as a bottleneck common carrier to maximum effect. For example:

- When CSXT reminded Raritan that it did not have an agreement with Raritan to pay its charges, Mr. Shapira replied:

(Shapira Exh. 15).

- Further, in a follow-up e-mail, Mr. Shapira suggested:

(Supp. Pet. Exh. 1)

The foregoing statements, of course, directly contradict Raritan’s assertion to the Board that “Customers who have access to both CSX and NS at the park today will continue to have the same access post-consummation.” Raritan July 27 Reply at 7.

- NS earlier provided the Board with the verbatim transcript of an e-mail in which Raritan’s President, Mr. Shapira, warned NS that

NS Supplemental Statement filed June 21, 2004. In his deposition, Mr. Shapira

Shapira Dep at

44-45. The context of the entire e-mail, and specifically its reference to this proceeding, belies

- Mr. Shapira's reaction in another e-mail to concerns that Raritan's rates to Raritan Center and Heller Park were too high was clear and succinct:

(Shapira Exh. 4)

- In another e-mail to CSXT marketing officers, Mr. Shapira repeated that
and added a specific threat:

(Shapira Exh. 5)

- At his deposition, Mr. Shapira expanded on his view that Raritan was entitled to set demand-based rates for its services:

(Shapira Dep. 28-29)

The Board in its Decision served in this proceeding on June 25, 2004, suggested that there were shippers "that would apparently prefer Raritan's service over the service of petitioners." Slip op. at 4. Presumably, the Board's comment was based upon the statement of

Superior Warehousing Systems, Inc. (“Superior”), which characterized itself as a “customer of Conrail.” *See* June 24 Stay Reply, Exh. B at 1. No one else, other than Heller Parks, filed a statement. Further, neither Heller Parks nor Superior asserted that their preference for Raritan’s service could not be satisfied by having Raritan operate as a non-jurisdictional contract carrier, rather than as a jurisdictional common carrier. Finally, Petitioners’ discovery confirmed that neither Superior nor the other active “customer” in Heller Park, Dawn Foods, is actually a shipper that will have to pay Raritan. Rather, Superior and Dawn Foods operate warehouses that are transit points for movements that are paid for by the shippers that originate the traffic. (Shapira Dep. 52-53) Raritan did not seek or receive support from any shippers that will be required to pay Raritan for its operation as a jurisdictional common carrier at Heller Park. (Shapira Dep. 142)

Furthermore, it appears that the rates that the actual shippers will pay for moving traffic through Heller Park are likely to increase if Raritan is permitted to operate as a common carrier there. There is no saving involved for CSXT or NS in having Raritan, as opposed to Conrail, operate within Heller Park. The track involved is only a mile long, and only a few carloads of traffic a day move in or out of the Park. (Shapira Dep. 194) Under the interchange arrangement between Conrail and Raritan, Conrail crews operating out of Metuchen Yard will be delivering and picking up cars on Heller Park track only a few hundred feet from the points at Superior and Dawn Foods where they delivered and picked up cars prior to Raritan beginning its operations in the Park. (Shapira Dep. 158; Exh. 28 at 3) The interchange operation offers no efficiency saving for CSXT or NS over direct service by Conrail. Raritan’s charges simply add additional cost to the through movement. CSXT and NS will not bear those costs (Shapira Exhs. 15 and 16); thus, Raritan intends to assess its charges directly against the shippers originating the traffic (Shapira

Dep. 65-66; Exhs. 13, 14, 16). Absent a countervailing decrease in the rates charged by the other railroads participating on these movements, the overall charges paid by the shippers involved will necessarily increase. (Shapira Dep. 72)

Petitioners do not claim here that Raritan cannot replace Conrail as the switching carrier within Heller Park on Heller Parks' own track. But that is a far cry from permitting Raritan to set up a bottleneck common carrier operation on that track. The fact that Conrail, CSXT and NS "will continue to have a role in providing service to shippers that are located within the Heller Industrial Park," as the Board noted in its June 25 Decision, misses the point that a bottleneck carrier does not have to be able to complete a move itself in order to seek the "lump" of revenues on individual movements that is available to a common carrier railroad that provides sole access at the origin or destination of a movement. *Burlington Northern, et al. – Merger – Santa Fe Pacific, et al.*, 10 I.C.C.2d 661, 748-53. And, even if the evidence here did not show that that is a very real threat, we show next why there is no good regulatory reason to run the risk. As we discuss below, Raritan's use of the track is essentially no different than Conrail's has been, and there is no reason not to give it the same non-jurisdictional treatment. Further, Raritan could fully provide the service it wants to provide at Heller Park as a contract switcher, as another railroad owned by Mr. Shapira does at another industrial park elsewhere in New Jersey.

II. The Evidence Developed In Discovery Shows That Raritan's Use Of the Heller Park Tracks Is Not Significantly Different Operationally From Conrail's Prior Non-Jurisdictional Use, And No Different From The Non-Jurisdictional Contract Switch Operations Performed By Another Shapira Railroad Elsewhere In New Jersey.

As discussed above, the *economic* ramifications of replacing Conrail – a neutral and invisible agent of its owners, CSXT and NS, without the ability to set its own rates or exert market power at Heller Park – with Raritan, an independent bottleneck common carrier with the power to set its own rates and discriminate between the two linehaul carriers, are serious.

Moreover, the evidence developed so far indicates that *operationally*, what Raritan will actually do – switching cars delivered to the Park – is essentially the same type of non-jurisdictional operation that Conrail performed before.

The Board in its June 25 Decision cited *Yolo Shortline Railroad Company – Lease and Operation Exemption – Port of Sacramento*, STB Finance Docket No. 34114 (served Feb. 3, 2003), slip op. at 4 n.9, for the proposition that “track may have different regulatory status for different users.” June 25 Decision at 4. *Yolo* itself cross-referenced the Board’s earlier recitation in a related case of the well-established proposition that a track’s status may be different for different users “based on each carrier’s use and operation over the track.” *Union Pacific Railroad Co. – Operation Exemption – In Yolo County, CA*, STB Finance Docket No. 34235 (served Dec. 5, 2002), slip op. at 3 n. 8 (citing *Brotherhood of Locomotive Engineers v. United States*, 101 F.3d 718, 727 (D.C. Cir. 1996)). The law is clear that a difference in usage is the only basis on which the Heller Park track at issue could be found jurisdictional for Raritan’s operation but not for Conrail’s operation. See July 7 Petition to Revoke at 5-8.²

Petitioners’ discovery has confirmed that there is no difference in kind between the service Raritan will be providing at Heller Park and the service that Conrail provided. There is no local traffic there. Raritan will simply be switching cars carried in line-haul service by CSXT

² The only other basis upon which the STB has suggested that one railroad’s operation could be considered subject to the STB’s licensing authority when another railroad’s operation over the same track was not is where “the operations at issue would constitute the carrier’s entire line of railroad” and “the larger purpose and effect of [the transaction] . . . is to create a new common carrier by rail.” *Texas Central Business Lines Corp. – Operation Exemption – MidTexas International Center*, STB Finance Docket No. 33997 (served Sept. 17, 2002), slip op. at 2, citing *Effingham R.R. Co. – Petition for Declaratory Order – Construction at Effingham, IL*, 2 S.T.B. 606 (1997), *aff’d sub nom. United Transportation Union v. STB*, 183 F.3d 606, 613 (7th Cir. 1999). That legal theory has not application here, since Raritan is already a carrier with operations elsewhere and “the larger purpose and effect” of the transaction here is not “to create a new common carrier by rail.”

and NS and delivered by Conrail over its branch lines to Heller Park. (Shapira Dep. 156-59)

That is the same type of service that Conrail provided at Heller Park.³ Of course, because Raritan's operation at Heller Park is isolated from the rest of its system, Raritan will have to station a locomotive at Heller Park, but that is true of all contract switching operations in confined areas, and without regulatory significance. Raritan will pick up and deliver cars to Superior and Dawn Foods within Heller Park just as Conrail did. (Shapira Dep. 156-159)

Raritan has agreed to maintain the track in Heller Park, whereas Conrail's agreement provided for Heller Park to maintain the track, but Heller Park will continue to own the track. (Shapira Exh. 24, § 2) Further, the License Agreement between Raritan and Heller Park has a limited 20-year term. (Shapira Exh. 24 at 1)

That Raritan's operations will be similar in kind to Conrail's is most clearly demonstrated by the fact that traffic moving to Heller Park generally will still be moved within the SAA to the gate of Heller Park by Conrail – it is only over the final few hundred feet that Raritan will take over. Instead of Conrail delivering the traffic directly to the receiver, it will stop its train, disengage and secure the few cars to be delivered within the industrial park, and then withdraw. From the other side of the now-secured cars, Raritan will hook up, inspect, and haul the cars the

³ Undoubtedly, Raritan will argue in its reply to this Supplemental Petition, as Mr. Shapira did in his deposition, that Raritan will provide "better" switching service at Heller Park than Conrail did. (Shapira Dep. 179-84) Petitioners doubt that claim, but, in any event, it is irrelevant. In the first place, Raritan can provide the same "better" switching service at Heller Park as a contract carrier as it can provide as a common carrier. Mr. Shapira conceded exactly that in his deposition. (Shapira Dep. 201) In the second place, "better" switching service to a limited number of shippers on a one-mile appendage to a branch line is still switching service to a limited number of shippers on a one-mile appendage to a branch line. *See The New York City Economic Development Corp. – Petition for Declaratory Order*, STB Finance Docket No. 34429 (served July 15, 2004), slip op. at 5-7 (discussing criteria for spur track v. line of railroad). Presumably, no industrial park or shipper that owned the track used for switching would evict one rail operator in favor of another if it did not believe the new operator would provide better service. But that does not change the nature of the service being provided or the Board's authority over the track involved.

final few hundred feet to the receiver. Except for the extra work required to exchange traffic between the two carriers, the operation would be the same before as after. (Shapira Dep. 158-59; Exh. 28 at 3)

Moreover, at his deposition, Mr. Shapira revealed that he is the owner of another rail operation, the New Jersey and Northern Railroad, which has exclusive operating rights for a 35-year term at another, larger industrial park in New Jersey, Veteran Industrial Park. (Shapira Dep. 7-10) Just as at Heller Park, New Jersey and Northern's license agreement is with the industrial park, not the individual rail customers there. (Shapira Dep. 11) Just as at Heller Park, the New Jersey and Northern holds itself out to serve all of the customers in the industrial park. (Shapira Dep. 13) Just as at Heller Park, the New Jersey and Northern switches cars in connection with line-haul rail movements with NS. (Shapira Dep. 8) Yet Mr. Shapira has never sought authority from the STB for the operation of the New Jersey and Northern Railroad. (Shapira Dep. 7) He and his counsel characterized the New Jersey and Northern as an "industrial-switching railroad" or "contract switcher." (Shapira Dep. 7-8, 167-68)

Petitioners are not asking the Board to decide here whether the New Jersey and Northern is a contract switcher. The point here is that Raritan's own management and legal counsel, who are the same as the New Jersey and Northern's management and legal counsel, have conceded that another industrial park switching operation that appears to be indistinguishable from Raritan's operation at Heller Park is a non-jurisdictional rail operation. A railroad cannot simply choose whether its switching operation is jurisdictional or not. *See Union Pacific R.R. – Operation Exemption – In Yolo County, CA*, STB Finance Docket No. 34252 (served December 5, 2002), slip op. at 3-5 (rejecting notice of exemption to make previously excepted operations subject to the Board's licensing authority).

In addition to the extraordinary importance placed by the Board in *Decision No. 89* on the reintroduction of two-railroad competition in the Shared Asset Areas and the Board's and ICC's historic emphasis on not eliminating competitive access where it has been created, the inconsistent treatment of New Jersey and Northern's operation and Raritan's Heller Park operation provides an additional strong basis for revoking the exemption in this case to permit a more searching inquiry into the basis for Raritan's position that its operation at Heller Park should be given common carrier status.

Conclusion

Petitioners have powerful reasons in this case, under Sections 10501(d) and 10101, for seeking a thorough review of Raritan's claim that its operation at Heller Park is a jurisdictional common carrier operation. The SAAs in New Jersey and elsewhere were created in the Conrail control transaction for the express purpose of permitting CSXT and NS to compete head-to-head for business from shippers that had theretofore only been served by one carrier, Conrail. To ensure that those shippers would receive direct competitive service from CSXT and NS, Conrail was prohibited from engaging in any marketing, interchanging any traffic, appearing in any routes, or setting any rates. Seamless access and direct head-to-head competition can be maintained for CSXT and NS where industrial parks or shippers decide to perform switching operations at their facilities with their own employees or with contract switchers. However, as the discovery in this case has helped demonstrate, the insertion of a common carrier operation at the origin or destination of a movement creates an economic "2-to-1" bottleneck that reduces competition and undermines the "most important public benefit" of the Conrail transaction.

Moreover, there is no evidence in this case that Raritan's actual operations at Heller Park are so different from Conrail's that Raritan's operations should be regarded as jurisdictional

when Conrail's were not. On the contrary, the evidence developed in discovery shows that Raritan's own management maintains contract switching operations in another industrial park that appear indistinguishable from Raritan's operations at Heller Park. Particularly in light of the adverse impact on competition from permitting Raritan to establish a common carrier switching operation on Heller Park's one-mile track, the Board should revoke Raritan's exemption. Raritan can then choose to continue operations as a contract carrier at Heller Park, as its affiliate New Jersey and Northern operates at Veteran Industrial Park, or Raritan can file an individual petition for exemption or an application for common carrier operating authority in a proceeding that permits a full inquiry into the merits of that petition or application.

Respectfully submitted,

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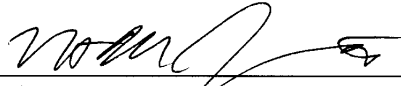
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Public Version of "Supplemental Petition to Revoke Exemption" and the Appendix thereto was served by hand-delivery this 2nd day of September on the following:

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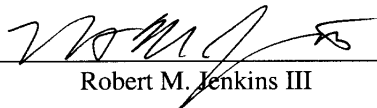

Robert M. Jenkins III

EXHIBIT 1

-----Original Message-----

From: EyalShapira@aol.com [mailto:EyalShapira@aol.com]

Sent: Thursday, July 15, 2004 3:49 PM

To: Giobbie, Tony; Kellermann, Len

Cc: EyalShapira@aol.com

Subject: Raritan Central - Heller

How CSX would be able to quote rate to a shipper for a place it does not serve after Aug. 4th, 2004? Like Superior Warehouse.

We also need to create a new station at Heller Park for the purpose of interchange.

Eyal Shapira
Raritan Central