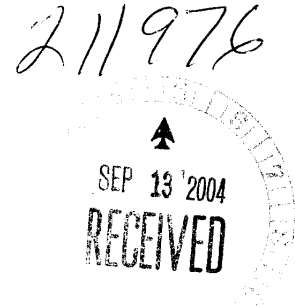


PUBLIC VERSION

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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REPLY OF RARITAN CENTRAL RAILWAY, L.L.C. TO
SUPPLEMENTAL PETITION TO REVOKE EXEMPTION

John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2838

Scott M. Zimmerman
Zuckert, Scoutt & Rasenberger,
LLP
888 17th Street, NW - Suite 700
Washington, DC 20006
(202) 973-7929

*Attorneys for Norfolk Southern
Railway Company*

Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street J150
Jacksonville, FL 32202
(904) 359-1192

Attorney for CSX Transportation, Inc.

Jonathan M. Broder
Consolidated Rail Corporation
2 Commerce Square, 29th Flr.
2001 Market Street
Philadelphia, PA 19101
(215) 209-5020

Robert M. Jenkins III
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3261

*Attorneys for Consolidated
Rail Corporation*

John Humes, Esq.
4135 Lakeside Drive
Jacksonville, FL 32210

Dated: September 13, 2004

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SURFACE TRANSPORTATION BOARD

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RARITAN CENTAL RAILWAY, L.L.C.
- OPERATION EXEMPTION -
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REPLY OF RARITAN CENTRAL RAILWAY, L.L.C. TO
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INTRODUCTION AND BACKGROUND

On August 31, 2004, Consolidated Rail Corporation ("Conrail"), CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Railway Company ("NS") (collectively "Petitioners") jointly filed a "Supplemental Petition to Revoke Exemption"¹ pursuant to the Board's decision in this proceeding served August 12, 2004. Respondent Raritan Central Railway, L.L.C., ("Raritan") urges the Board to deny the Supplemental Petition as well as the initial Petition to Revoke. Despite the assertions and arguments contained in Petitioners' two revocation petitions and one stay petition as well as testimony obtained through two days of depositions, Petitioners have failed to establish any basis for revoking the exemption the Board previously granted

¹ Hereafter "the Joint Supplement."

Raritan.

This proceeding began on June 15, 2004, when Raritan, an existing class III short line railroad, originally filed its verified notice of exemption under the procedures of 49 CFR 1150.41 seeking to operate a one mile long segment of track owned by Heller Industrial Parks, Inc.² Thereafter, on June 18, 2004, Petitioners asked the Board to stay Raritan's exemption on the grounds that Conrail operated the track as industrial, switching, or spur trackage exempt from STB entry regulation under the provisions of 49 U.S.C. 10906. By decision served June 25, 2004, the Board denied Petitioners' request. On July 7, 2004, Petitioners filed the initial Petition to Revoke Exemption (hereafter "the July 7 Petition"), to which Raritan replied on July 27, 2004 (hereafter "the July 27 Reply"). On July 12, 2004, the Board published Raritan's notice of exemption authorizing the start up of operations. Pursuant to that notice, Raritan instituted operations on August 15, 2004, and has been providing service continuously since that date.

Meanwhile, Conrail sought discovery from Raritan in the form of document production and the deposition of its President Eyal Shapira.³ Upon completion of that discovery, Petitioners

² Heller Parks granted Raritan access to the subject track pursuant to a license agreement.

³ The initial deposition session took place on August 4, 2004. The deposition was continued by telephone on August 18, 2004.

supplemented their July 7 Petition with the Supplemental Petition.

ARGUMENT

Here Conrail renews two overlapping arguments asserted in its July 7 Petition for revoking Raritan's exemption. Neither satisfy the statutory basis for revocation. They are:

- This case raises substantial factual and legal issues that merit, in Petitioners' words, a "more searching process" - whether by individual petition for exemption or full application - than is possible in a 7-day notice proceeding under 49 CFR section 1150.41. The issues which Petitioners claim require "a more searching process" include whether Raritan will operate the track as an unregulated "contract switcher" or a common carrier and whether Raritan's common carrier operation of the track could lead to the creation of a "bottleneck carrier" claimed to eliminate the two carrier competition said to exist before consummation.
- This case presents the issue of whether the track which is the subject of this proceeding is "jurisdictional" track subject to the Board's licensing power under 49 U.S.C. 10901 or 10902 or intrastate spur, switching, or industrial trackage exempt from STB entry or exit regulation under 49 U.S.C. 10906.

In its July 27 Reply, Raritan urged that there is no basis for granting Petitioners' request. After reviewing the statutory grounds for granting a revocation request and the pertinent case law, Raritan searched the July 7 Petition for some basis for the relief sought and found none. Moreover, after analyzing Petitioners' request under the statutory standard, Raritan noted that Petitioners have neither shown nor alleged that its notice contained false or misleading information, that it had in any way abused the STB's procedures, or sought to undertake a sham transaction. Petitioners' only allegation was an asserted need for some unspecified regulation. Petitioners did not show specifically how the transaction would adversely affect the competition-related goals of section 10101a's rail transportation policy, challenge the transaction's limited impact, or show any opportunity for abuse of captive shippers.

Two days' worth of deposition testimony did not advance Petitioners' case. Rather Raritan demonstrated that it is the shipper - and not it - who controls the traffic and that Raritan's customers have numerous competitive alternatives and Raritan itself experience vigorous competition. Shapira Dep. at 33, 165; 20-6, 48, 54, 57, and 177.

1. **Petitioners have failed to show a need for "a more searching process" for evaluating Raritan's proposal**

Consistently, Petitioners have asserted that the Board's

handling of this matter has in some way been inadequate for developing a full record. Petitioners urge the Board to require Raritan to resubmit its proposal by means of either an individual petition for exemption under 49 U.S.C. 10502 or a formal application under 49 CFR 1150.

As Raritan discussed at length in its July 27 Reply, the Board's handling has been more than adequate. Raritan consented to a short extension to the effectiveness of its notice of exemption to allow the Board to consider and rule upon (in fact denying) Petitioners' Petition for Stay. The Board has allowed Conrail sufficient time to prepare and file its initial July 7 Petition to Revoke, to take two days of depositions of Raritan's President, to file a Supplemental Petition to Revoke, and to allow Raritan to file this Reply. Upon the close of the record on September 13, the Board will have until October 5 to decide whether to begin any additional proceedings necessary on the revocation request and will have a full nine months in which to conclude those proceedings. Raritan cannot conceive of any need for re-filing its request for operating authority inasmuch as the current procedures afford the Board as much as a year to conduct the "searching process" Petitioners seek.

2. Raritan is not a "bottleneck carrier" extracting monopoly profits from captive shippers.

Central to Petitioners' case is its assertion that Raritan

is a "bottleneck carrier" with substantial market power over the pricing and routing of traffic to customers. Supplemental Petition at 4,5,7-8, and 11.

As the "Grandfather of bottleneck carriers," Conrail of all railroads should recognize the absurdity of its position. The basis for Conrail's position is its perception that Raritan has merely stepped into Conrail's shoes at Heller Parks, inserting itself as an unwarranted and unneeded carrier between the line haul railroads [NS or CSXT] and the customer/end receiver. Id. at 11. In so doing, Conrail alleges, Raritan would be able to control traffic flows, increase customer rates, and/or decrease NS and CSX line haul railroad revenues. Id. at 10-11. As the Shapira deposition illustrates, nothing could be further from the truth.

The starting point for this analysis begins with the definition of the term "bottleneck carrier." In this regard, the AAR's website defines a "bottleneck carrier" as "a railroad which serves either an origin or destination, but more than one railroad services the non-bottleneck segment." The website depicts a bottleneck carrier as a railroad (identified as "RR1") which operates from the customer location at point "A" to point "B" where it connects with a competing railroad (identified as "RR2") and then to a jointly served point "C." See, AAR Website dated January 2004 appended here as Attachment A. Western

Railroad Resources, Inc. v. Surface Transp. BD., 109 F.3d 782, 786 (D.C. Cir. 1997), cited by Conrail at page 4 of its Supplemental Petition, suggests a "bottleneck carrier" is a railway that "can transport it [the commodity] from some interchange point to the utility end-user."⁴ The significance of this label is the notion that there is only "one lump" of profit to be extracted from the haul and the monopoly carrier (or the carrier which collects the freight rate) is the one likely to push the through rate as high as possible and keep the monopoly profits to itself by playing the connecting carriers off against each other in setting rate divisions. Id. at 787.

By definition, Raritan does not qualify as a "bottleneck carrier" because, unlike the carrier "RR1" identified on the AAR website, it does not have the line haul from point "B" to point "C". Moreover, even if Raritan could viewed as being the destination carrier discussed in Western Resources, supra, the term "bottleneck carrier" does not apply. Raritan does not collect the rate from the customer. The originating line haul class I railroad does. Raritan does not receive a rate division of the line haul rate. At best, it receives a switching allowance of several hundred dollars per car from either NS or

⁴ Conrail acted as a "bottleneck carrier" because it enjoyed a substantial line haul movement between western or southern line haul carriers and the ultimate customer location somewhere in the northeastern part of the country.

CSX pursuant to its tariff schedule for delivering the traffic to its destination.⁵ Should NS or CSX decline to pay Raritan's charge, Raritan would have to collect its local charge from the shipper. Finally, if the term "bottleneck carrier" applies to all destination carriers, then all short line railroads are "bottleneck carriers."

But even if Raritan could be said to have a monopoly over railroad transportation in Heller Parks, there is no basis to revoke its exemption on competition-related grounds. Assuming, *arguendo*, that Raritan could be said to have monopoly power over its customers' traffic, that does not mean that Raritan has acted in such an anticompetitive manner as to warrant a revocation of its exemption. Cf., Laurel Sand & Gravel, Inc. v. CSX Transp., Inc., 704 F. Supp. 1309, 1322-3 (D. Md.) (which states a monopoly by itself is insufficient to establish liability under the antitrust laws; to be found liable, the monopolist must also deliberately engage in anticompetitive acts).

Petitioners' quotes at pages 8 and 9 of the Supplemental Petition deposition testimony, appended to the Confidential Version of this Reply as Attachment B,

⁵ Indeed, as Mr. Shapira has testified, NS and CSX have declined to execute handling line or switching agreements with Raritan. Shapira Dep. at 16.

Redacted

Redacted

**3. Raritan's customers enjoy vigorous competition at both
the Raritan Center and the Heller Parks facilities.**

Conrail would have the Board believe that the substitution of Raritan's service for that of Conrail at Heller Parks creates a new "2-to-1" point thereby negating what it terms "the most important *public* benefit arising out of the Conrail transaction. See, Supplemental Petition at 4-5.

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and that Raritan markets its services based upon both the overall rate and Raritan's specialized service package (service 24 hours per day, seven days per week, with on-call switching and attractive rates on ancillary services such as storage) (Shapira

Dep. at 41, 45-7, and 61). Mr. Shapira testified that the competition his rail customers enjoy and Raritan itself faces take several forms. First, customers have a choice using either NS and CSX as their line haul carrier, just as they did when Conrail handled service directly into Heller Parks. Shapira Dep. at 20-6, 171-2. Second, customers can and do use motor carrier service. Id. at 170. Third, many customers can receive freight at facilities located outside Heller Parks at other facilities served directly by NS or CSX, in many cases outside of New Jersey. Id. at 169-170.

Redacted

4. Raritan's operation at the Heller Parks facility constitutes the operation of a regulated line of railroad under 49 U.S.C. 10901 or 10902.

Conrail attempted to elicit deposition testimony from Eyal Shapira to establish that Raritan's operations at Heller Parks will not be significantly different from Conrail's previous operation there and that Raritan's Heller Parks operations are substantially the same as the unregulated contract operations provided by its corporate sibling the New Jersey & Northern Railroad at its Somerset Intermodal Facility, Somerville, NJ. Conrail is mistaken.

The Supplemental Petition as well as previous filings by both parties contain substantial case law and analysis on when a piece of railroad track is either an unregulated spur or a regulated line of railroad. There is no point to reiterating precedent both parties have cited and discussed at length before. Furthermore, unlike Raritan, Conrail previously submitted almost no testimony that would allow the Board to determine that the Heller Parks trackage was an regulated spur.

There are several differences between the service which Conrail previously provided at Heller Parks and that which Raritan now provides. First, consistent with precedent such as Effingham RR Co.-Pet. For Declaratory Order, 2 S.T.B. 606 (1997), aff'd sub. nom. United Transp. Union v. Surface Transp. Bd., 183

F.3d 606, 608-12 (7th Cir. 1999), Raritan plans to use its Heller Parks trackage to "invade" new territory by means of using trucks and transload facilities to extend the marketing reach of its railroad. Shapira Dep. at 113. In fact, the Heller Parks operation represents a significant extension to and a doubling of Raritan's operation in Edison, NJ, instead of an insignificant part of Conrail's extensive northern New Jersey terminal operations.⁶ Second, unlike Conrail, NS, or CSX, Raritan is marketing ("a holding out") its Heller Parks services to the public as a rail carrier and a part of the national rail system and not merely as an agent for the connecting line-haul railroads. Id. at 60-1. Third, unlike Conrail, NS, or CSX, Raritan has established Heller Parks as a "station" for rate making purposes. Id. at 159. Fourth, Raritan's round-the-clock customized service described at length in the Shapira deposition differs materially from the "one-size-fits-all" service provided by Conrail. Id. at 41, 45-7, and 61. Fifth, Raritan has assumed from Heller Parks and its tenants the responsibility for track maintenance and derailment cleanup which Conrail had imposed on them. Id. at 125. Sixth, Raritan's employees are subject to

⁶ In comparing its former Heller Parks operation with Raritan's, Conrail implies that its operation is that of a private contractor to NS and CSX ("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). Yet, Conrail is still recognized by the Board as a common carrier. CSX Corp. Et Al.-Control-Conrail, Inc. Et Al., 3 S.T.B. 196, 374 (1998) ("[w]e further find that, after the Closing Date, [Consolidated Rail Corporation] will remain a 'rail carrier' as defined in 49 U.S.C. 10102(5)).

Railroad Retirement coverage. Id. at 34. Finally, as described in Mr. Shapira's statement, Raritan has spent substantial funds on totally rebuilding the railroad plant at Raritan Center and intends to do the same at Heller Park. Id. at 193; Shapira V.S. at 2.

5. This case is not unique.

Conrail would have the Board believe that this case "presents significant policy implications throughout the Northeast United States" because it would allow the insertion of a short line between NS or CSX, the "neutral" Conrail and, the destination point. Supplemental Petition at 3. That is a gross overstatement.

As the Board knows, numerous short line railroads exist inside the Conrail Shared Assets Areas connecting with Conrail, and through it, with NS and/or CSX.⁷ In fact, Raritan's original operation at Raritan Center and its predecessor, at that facility, Durham Transport, are additional examples. Similarly, inserting a short line between another short line and its class I connection(s) is becoming increasingly common today. See, e.g., FD No. 34495, Buckingham Branch Railroad Company-Lease-CSX Transportation, Inc., application filed May 26, 2004, at 15 where

⁷ A few examples include the Port Jersey Railroad, New York Cross Harbor Railroad, Winchester & Western Railroad New Jersey Division, the Southern Railroad of New Jersey, and the Morristown & Erie Railway. No one has asserted that these railroads pose any operating or commercial problems for Conrail, NS, or CSX, or their customers.

the applicant states that it will connect and interchange with the Eastern Shore Railroad, Inc.

So then what is the problem which Conrail says presents significant transportation policy implications throughout the Northeast? We are only left to guess. But revocation requests must be supported by more than guesses or speculation. In the words of the former Interstate Commerce Commission, the party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. See, Minnesota Comm. Ry., Inc.-Trackage Exempt.- BN RR. Co., 8 I.C.C.2d 31, 35-7 (1991). Conrail has not satisfied that burden.

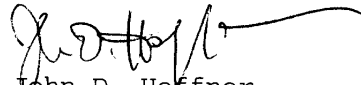
CONCLUSION

Petitioners have challenged Raritan's exemption because it fears the proliferation of a series of extremely small short line railroads in the Shared Asset Areas taking over local customer access. As the Board could observe at the Conrail Oversight hearing held in Trenton, NJ, on April 2, there is substantial concern among local officials that NS and CSX not only want to discourage rail shippers from locating in the Shared Assets Areas but that they want to relocate existing customers to points outside the Shared Assets Areas. See, testimony presented by James Daley for Union County, NJ.

There is no basis for the Board to grant this revocation

petition. There is no testimony from rail customers - either consignees or consignors - complaining about Raritan's services, rates, or practices. No one has alleged that Raritan obtained its exemption using false or misleading information or misusing the Board's regulatory procedures. Raritan is not a "bottleneck carrier" abusing its monopoly position at the expense of customers or connecting railroads or stifling competition. Finally, Raritan has demonstrated that its use of the Heller Parks trackage is a "line of railroad" subject to the Board's entry and exit jurisdiction under 49 U.S.C. 10901-6.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Due: September 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September 2004, the Reply of Raritan Central Railway, L.L.C. to Supplemental Petition to Revoke Exemption was sent by first-class United States mail, to the following:

John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2838

Scott M. Zimmerman
Zuckert, Scoutt & Rasenberger,
LLP
888 17th Street, NW - Suite 700
Washington, DC 20006
(202) 973-7929

*Attorneys for Norfolk Southern
Railway Company*

Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street J150
Jacksonville, FL 32202
(904) 359-1192

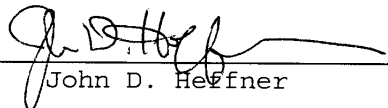
Attorney for CSX Transportation, Inc.

Jonathan M. Broder
Consolidated Rail Corporation
2 Commerce Square, 29th Flr.
2001 Market Street
Philadelphia, PA 19101
(215) 209-5020

Robert M. Jenkins III
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3261

*Attorneys for Consolidated
Rail Corporation*

John Humes, Esq.
4135 Lakeside Drive
Jacksonville, FL 32210



John D. Heffner

PUBLIC VERSION

**VERIFIED STATEMENT
OF EYAL SHAPIRA**

Eyal Shapira, being duly sworn, deposes and states as follows:

1. My name is Eyal Shapira. My business address is One Gateway Center, Suite 501B, Newton, MA 02458.
2. Since August 15, 1998, I have been in the business of owning, operating, and marketing short line railroads. I initially began my involvement as a private railroad industrial development consultant to the Providence & Worcester Railroad, Rail-Tex, Conrail, and other short line railroads in New England. Currently, I own and operate two common carrier short line railroads, Raritan Central Railway, LLC (hereafter "Raritan") and the Pennsylvania & Southern Railway, LLC, and one private carrier (unregulated) operation, the New Jersey & Northern Railway, LLC.
3. I am the very same Eyal Shapira whose deposition was taken by Petitioners Conrail and Norfolk Southern Railway on August 4 and August 18, 2004.

During the course of that deposition, I testified on two matters, which require brief elaboration.

4. First, Petitioners questioned me at great length about the charges, which Raritan imposes for services rendered by it at the Raritan Center and Heller Parks facilities. As I testified during my deposition, Raritan merely seeks to collect charges that enable it to cover the cost of its railroad operations, the cost of its very significant investment in rail facilities at Raritan Center (and those improvements likely to be made at Heller Parks), and a reasonable return on its investment. Shapira Dep. at 166-8.
5. I am submitting with this statement a series of pictures, which illustrates in graphic detail the condition of the track and right of way at Raritan Center before and after Raritan assumed that operation. Raritan spent almost three million dollars in state and private money improvement these railroad facilities. Shapira Dep. at 193.
6. As I testified, the condition of the Heller Parks trackage is very poor today. Shapira Dep. at 192-3. I anticipate spending a substantial sum

of money to put it in the same condition as the
Raritan Center facilities are in today.

7. To suggest that Raritan is taking advantage of
its connecting railroads or customers is
nonsense.

Redacted

8. Finally, I would like to emphasize Raritan's success in terms of its "holding out" as a common carrier. During the Deposition, I testified that Raritan had increased carloads at Raritan Center from 800 to 4200 over three years, an almost 500% increase. Shapira Dep. at 193. Our accomplishments at Raritan have been so spectacular to warrant an article in *Railpace* Magazine. I also testified that Raritan has employed a person to go out and solicit traffic and Raritan intends to market the Heller Parks facility as aggressively as it has the Raritan Center facility. Shapira Dep. at 60-1. I testified that while there are only two customers at Heller Parks today, we plan to double that traffic quickly. Shapira Dep. at 147-9.

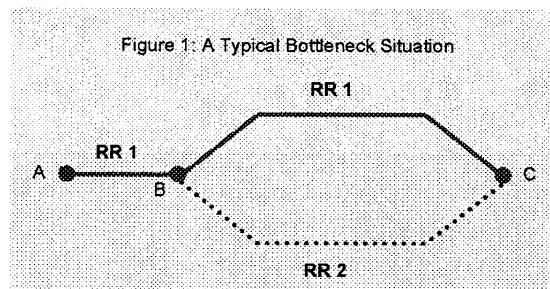
APPENDIX A

What Should Be Done?	Preserve the Surface Transportation Board's (STB) policy on railroad "bottlenecks."
Why?	Reversal of existing bottleneck policy — as called for in S. 919/H.R. 2924 in the 108 th Congress — is contrary to economic logic. It would lead to an unjustified government-sanctioned revenue transfer of more than \$4 billion from railroads to shippers, and would vastly expand government regulation of rail rates. Railroads would be unable to earn revenues sufficient to cover the full costs of their networks, inevitably leading to disinvestment and/or a taxpayer bailout of the rail industry.

Issue Overview

What is a "Bottleneck"?

Bottleneck cases are those in which only one railroad (the "bottleneck" carrier) serves either an origin or a destination, but more than one railroad serves the non-bottleneck segment. For example, in Figure 1, only RR 1 travels from A to B (the bottleneck segment), but both RR 1 and RR 2 travel from B to C. Thus, a movement from A to C could move the entire way on RR 1, or from A to B on RR 1 and from B to C on RR 2. Because a large proportion of rail customers are served by just one railroad, bottleneck policy has enormous significance for railroads.



Existing Bottleneck Policy

Nearly a century of firmly-established judicial and regulatory precedent gives railroads the right to choose how they want to route shipments and structure rates:

- As common carriers, railroads must provide rates and routes to move traffic from any origin to any destination. If it is necessary for more than one railroad to participate in order to move traffic from an origin to a destination, the railroads must interchange the traffic and establish a through rate for it (*i.e.*, a rate for the entire movement).

- Absent a significant disparity in efficiency, a railroad does not have to “short haul” itself by moving traffic just to a junction with another railroad if it can move the traffic all the way to the ultimate destination. For example, for traffic moving from A to C in Figure 1, RR 1 can interchange the traffic at B to RR 2 if it chooses to, but it cannot be forced to do so. Instead, it can decide to carry the traffic all the way to C.
- Similarly, a railroad is not required to provide a shipper with a separate rate for a segment of a through movement (e.g., from A to B in Figure 1). The rate for a through movement can be challenged via the STB as unreasonable, but the reasonableness test must be based on the entire through movement, not segments of it.

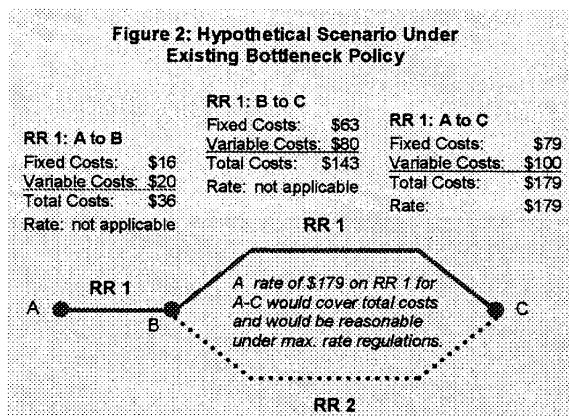
It is already in the best interest of railroads, including bottleneck carriers, to choose efficient, cost-effective routings. Where interchanges make economic sense, railroads already have the incentive to voluntarily negotiate them.

The Effect of S. 919/H.R. 2924's Changes to Existing Bottleneck Policy

S. 919/H.R. 2924 would overturn existing bottleneck policy in every major respect. Upon shipper request, a bottleneck carrier would be required to “short-haul” itself — *i.e.*, it would be forced to provide a rate for a movement to, and interchange traffic at, any junction with another railroad a shipper so designates. The rate for the bottleneck segment (A-B in the example) would be subject to STB maximum rate regulation based on the stand-alone cost of just that segment. In Figure 1, RR 1 would have to interchange traffic destined for C to RR 2 at B, regardless of whether RR 2's route was more efficient than RR 1's and even if the rate for the A-C movement on RR 1 was not unreasonably high. The rate RR 1 could charge for the movement from A-B would be based on the cost of that segment alone.

These changes could lead to the transfer of \$4 billion or more per year from railroads to shippers, completely wiping out rail net income. Railroads would have no hope of covering the full costs of their systems. The result would be reduced service and disinvestment. Eventually, rail service would disappear entirely in many areas or the government would have to bail out railroads at taxpayer expense.

To see why this is so, consider a simplified example in which RR 1's fixed and common costs (including a competitive return on capital) are \$79, including \$16 from A-B and \$63 from B-C (see Figure 2). Assume variable costs are \$20 from A-B and \$80 from B-C. Assume RR 1 charges \$179 to move traffic from A-C. In doing so, it covers the \$79 in fixed and common costs and the \$100 in variable costs for the entire route. The rate RR 1 charges for the entire origin-to-destination (A-C) movement is presumptively reasonable under existing maximum rate regulation, since the revenue-to-variable cost ratio (R/VC) for the traffic is less



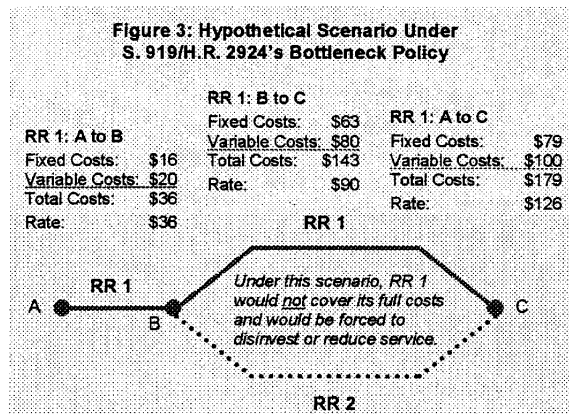
than 180 percent. (Under existing regulations, a rate can be reasonable if R/VC exceeds 180 percent if certain other conditions are met.)

Now, suppose bottleneck policy is changed such that RR 1 is forced to short haul itself. Upon shipper request, RR 1 must hand off traffic moving from A-C to RR 2 at B, and the rate RR 1 can charge for A-B is based solely on the cost of the A-B segment.

To achieve an R/VC of 180 percent for A-B, RR 1 could charge no more than \$36 (see Figure 3). Meanwhile, competition between RR 1 and RR 2 would drive down the rate for B-C to a level near variable costs.

Assume RR 1 retains the traffic, but can charge no more than \$90 from B-C — otherwise the shipper would use RR 2. (At a rate of \$90, RR 1 gets at least something to help cover its fixed costs from B-C, which is better than the zero dollars it would receive if RR 2 got the traffic.)

Under this scenario, RR 1's rate would be \$36 from A-B and \$90 from B-C, or \$126 total. At this rate, only \$126 of RR 1's total costs of \$179 would be covered, leaving a \$53 shortfall.



By capping the rate for part of a through movement at the stand-alone cost of just that part and driving the rate for the rest of the movement to a lower level, the new bottleneck policy would result in a maximum rate that is below what is necessary for a railroad to cover its full costs and replace its assets over time. As a matter of public policy, such an outcome cannot be considered appropriate. If a railroad cannot cover its costs, it cannot maintain its infrastructure and provide the services upon which its customers and our nation depend. In the example, RR 1's B-C segment would deteriorate and service would suffer. Eventually, absent government subsidies, it would become economically compelling for RR 1 to discard the segment entirely, and efficient end-to-end service from A-C would no longer be available.

Like other industries, railroads price differentially. Under differential pricing, those who need railroads the most pay more of the railroads' huge fixed and common costs. Indeed, only through differential pricing can railroads efficiently cover their huge fixed and common costs, serve the largest number of rail customers, and maintain the viability of the nation's rail system. Unfortunately, S. 919/H.R. 2924's changes to bottleneck policy would gut railroads' ability to price differentially and prevent them from covering their full costs.

S. 919/H.R. 2924's changes would have other serious negative effects. First, they would lead to an explosion in regulatory proceedings and costly behavior aimed at regulatory ends. An untold number of proceedings could be expected just to determine maximum rates for bottleneck segments. Second, railroads would be forced to splinter traffic over hundreds of interchanges at the direction of shippers. This would constitute a return to the "open routing" that characterized the pre-Staggers era and would reverse the substantial progress railroads have made since then in creating a streamlined, efficient nationwide network.

APPENDIX B IN CONFIDENTIAL VERSION ONLY

VERIFICATION

STATE OF)
CITY OF)

SS

Eyal Shapiro, being duly sworn according to law,
hereby deposes and states that (s)he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of (her)his knowledge, information and belief.

Subscribed and sworn to before me, a Notary Public, in and for
the City of Norton in the State of MA, this 13
day of Sept. 2007

Chari Goodman

Notary Public

My Commission expires:

7/10/09



Broken Rail
Replaced 8-15-04
Heller Park

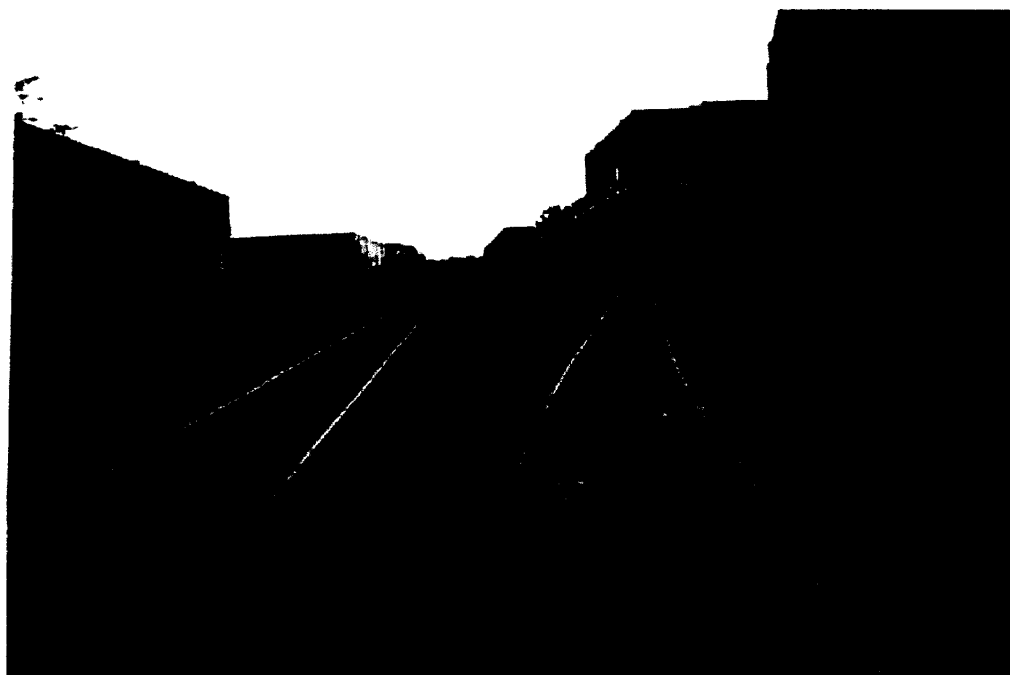




200 Mill Road
Heller Park



14 Executive Ave. (siding in bushes)
Heller Park



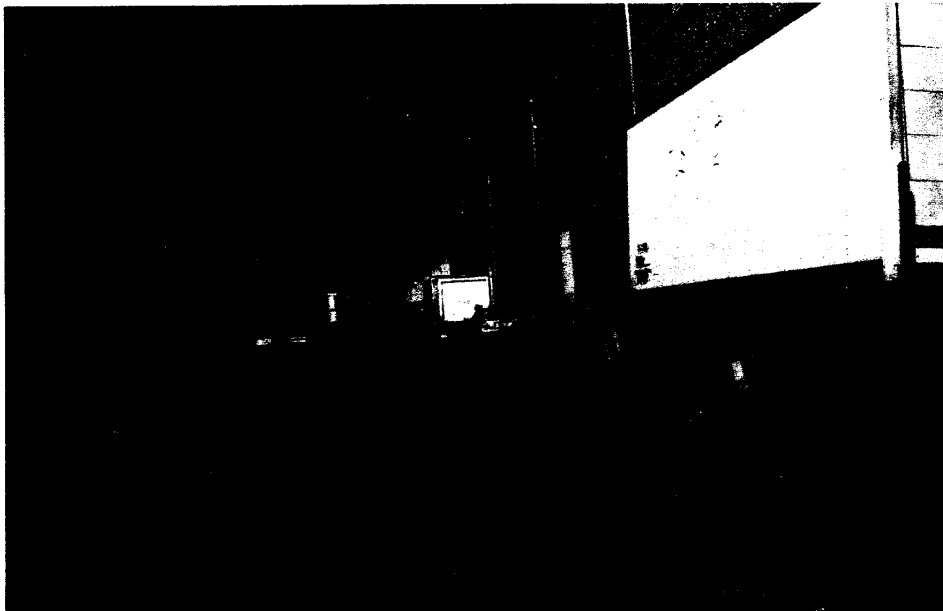
30 Executive Ave.
Heller Park 8-15-04



Siding to 21 Distribution Blvd.
Heller Park 8-15-04



Siding to 41-49 Distribution Blvd.
Heller Park 8-15-04



200 Mill Road - Heller Park 8-15-04



Heller Switch - 8-15-04



Siding to 14 Executive Ave.
Heller Park 8-15-04



Left- 200 Mill Road
Right- 14 Executive Ave.
Heller Park 8-15-04



Lead to 49 Distribution Blvd.
Heller Park



Dawn Foods Switch
Heller Park 8-13-04



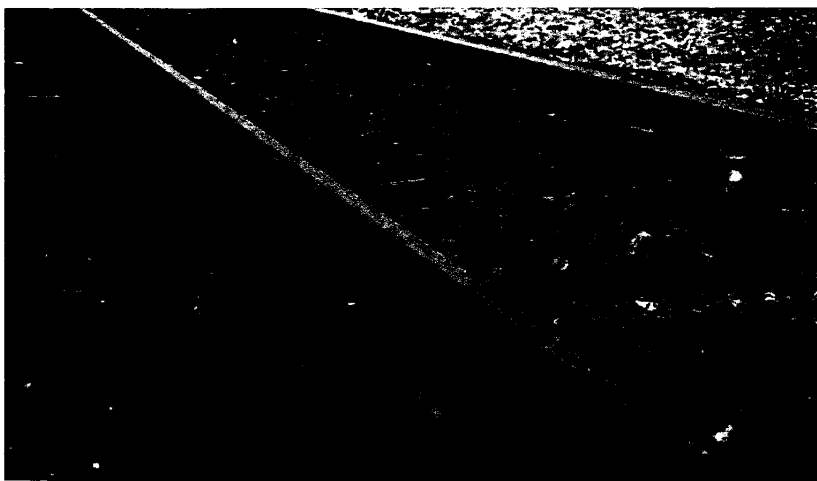
20 Executive Ave
Heller Park 8-21-04 New Switch



Sidings at 20 Executive Ave. before switch intallation
Heller Park 8-15-04



Bad Rail
Heller Park
8-15-04



RARITAN CENTRAL RAILWAY L.L.C.

One Gateway Center

Suite 501B

Newton, MA 02458

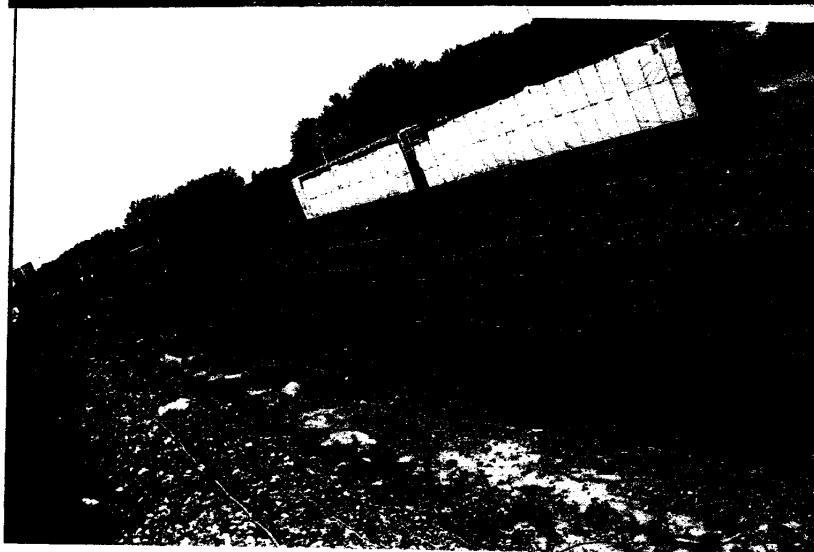
Raritan Central - lower yard

Edison, New Jersey

Sept. 2001 & Oct. 2001



Raritan Central
Railyard
August 2004





3

RARITAN CENTRAL RAILWAY L.L.C.

Sept 04 Under construction Track 5 and 6



RARITAN CENTRAL RAILWAY L.L.C.

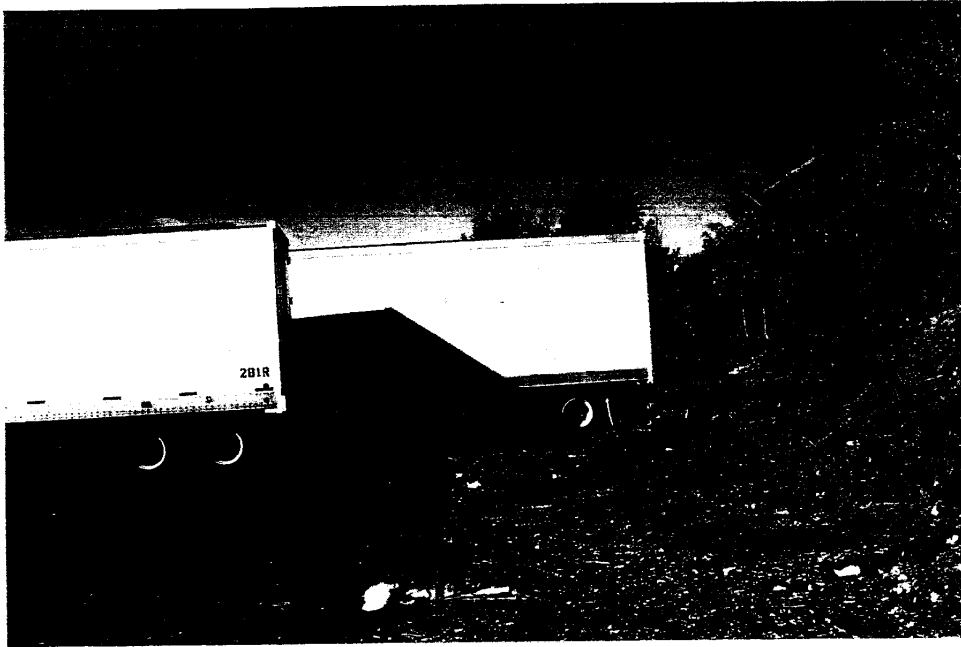
One Gateway Center
Suite 501B
Newton, MA 02458

Old Northfield Ave Lead

August 15, 2001

In the woods





Northfield Ave Lead
August 15, 2001
Under the dirt



out of the dirt
Oct. 2002

RARITAN CENTRAL RAILWAY L.L.C.
One Gateway Center
Suite 501B
Newton, MA 02458

Northfield Ave Lead
Raritan Central RR
Spring 2004
All new Construction





Oct. 2001



RARITAN CENTRAL RAILWAY L.L.C.

One Gateway Center
Suite 501B
Newton, MA 02458

Newfield Ave Lead

Oct. 2001

Newfield Ave Lead
Raritan Central RR
Spring 2004 all new construction



Newfield Ave Lead

Raritan center, Edison, NJ

Jan 2004



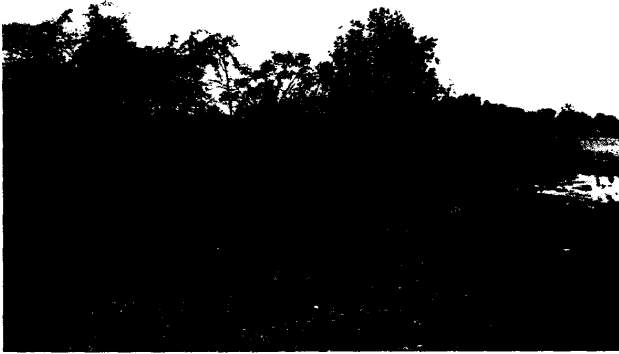
Dec 2003



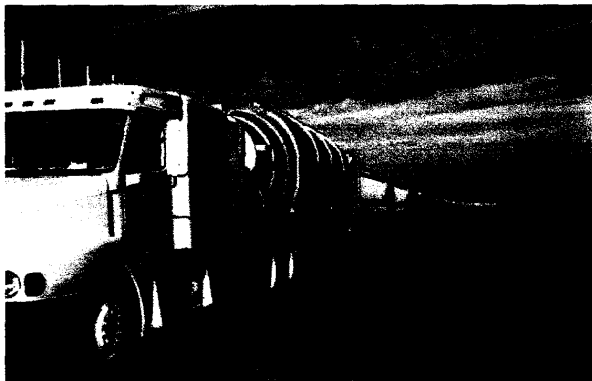
Summer 2003



Pershing Ave. Transload Tracks
50 Rail Car Spots



June 2003



September 2003



Raritan Central Railway L.L.C.
617-243-0137