



JOHN K. ENRIGHT, Associate General Counsel

1000 Howard Blvd., Mt. Laurel, N.J. 08054
Phone: 856.231.7206 - Fax: 856.231.7264
john.enright@conrail.com

September 12, 2006

Via UPS overnight delivery

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

SEP 13 2006

Part of
Public Record



Re: Motion for Reconsideration
Consolidated Rail Corporation – Abandonment Exemption
STB Docket No. AB-167 (Sub-No. 1185X)

Dear Secretary Williams:

I enclose for filing in the above referenced proceeding an original and 10 copies of Conrail's reply to the Motion for Reconsideration which James Riffin filed with the Board in respect to his Notice of Intent to File an Offer of Financial Assistance.

I have enclosed one additional copy, plus a self-addressed, stamped, return envelope. Please date stamp and return the extra copy to the undersigned at your earliest convenience. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John K. Enright".
John K. Enright

cc: Service List

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____ 1185
Docket No. AB-167 (Sub-No. 4285X)



CONSOLIDATED RAIL CORPORATION- ABANDONMENT EXEMPTION-IN
MERCER COUNTY, NJ

REPLY TO MOTION TO RECONSIDER

ENTERED
Office of Proceedings

SEP 13 2006

Part of
Public Record

John K. Enright
Associate General Counsel
Consolidated Rail Corporation
1000 Howard Boulevard, 4th Floor
Mt. Laurel, NJ 08054
(856) 231-7206

Dated: September 12, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-167 (Sub-No. 1285X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
MERCER COUNTY, NJ

REPLY TO MOTION TO RECONSIDER

Consolidated Rail Corporation (“Conrail”) replies to the Motion to Reconsider (the “Motion”) filed by Mr. James Riffin with the Surface Transportation Board (the “Board”) on August 18, 2006.

On June 13, 2006, Conrail filed a Notice of Exemption to abandon the Robbinsville Industrial Track, between milepost 32.20± and milepost 37.90± in the cities of Hamilton Township and Washington Township, Mercer County, NJ, a distance of 5.7 miles± (the “Line”).

On July 13, 2006, Mr. Riffin filed a Notice of Intent to File an Offer of Financial Assistance and requested information from Conrail concerning the net liquidation value (the “NLV”) of the Line. Conrail responded to Mr. Riffin on August 8, 2006, and supplied information necessary for Mr. Riffin to file an offer of financial assistance (“OFA”). On August 18, 2006, Mr. Riffin sought additional information relating to the NLV of the Line from Conrail. Conrail intends to respond to Mr. Riffin by September 18, 2006.

By decision served August 10, 2006, the Board imposed a public use condition, a notification condition concerning geodetic markers, a consultation condition concerning

salvage, and a historic condition on the abandonment. The Board also noted that "Mr. Riffin has not filed an OFA, and the Board has not received a request to toll the time period for filing an OFA from either Mr. Riffin or Conrail." Mr. Riffin filed the Motion on August 18, 2006.

The Motion requests the Board to reopen the August 10, 2006 decision and toll the time for the filing of an OFA, requests additional information relating to the NLV of the Line (paragraph 7), and requests a ruling as to whether CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NS") must receive authority from the Board to discontinue service over the Line before Conrail can abandon the Line.

Conrail takes no position on whether the Board should reopen the August 10 decision. However, if the Board does decide to toll the time for Mr. Riffin to file an OFA, Conrail requests the Board to limit that period to 10 days after Conrail notifies the Board that it has provided any additional information to Mr. Riffin required by 49 U.S.C. §10904(b) and the Board's rules at 49 C.F.R. §1252.27(a). Providing 10 days to file an OFA will not prejudice Mr. Riffin. It appears to Conrail that when considering an OFA, the Board's practice has been to accept OFAs that explain the difference between the railroad's valuation and that proposed by the prospective offeror. Once Mr. Riffin receives Conrail's latest response, an extended period of time to make the OFA, especially where the offeror can walk away from the process if either the parties cannot agree to terms or the offeror does not find the terms set by the Board to be acceptable, is not necessary. The Line has been out of service for much more than two years, so there are no existing shippers that would be affected by the abandonment or who require immediate rail service.

The Motion also seeks a ruling on whether CSXT and NS must seek authority to discontinue service over the Line. The Motion relies on *Norfolk Southern Railway Company—Discontinuance Exemption—in Hudson County, NJ*, STB Docket No. 290 (Sub-No. 212X) (STB served January 28, 2002) (“*NS Discontinuance*”) for the proposition that CSXT and NS must seek authority to discontinue service over the Line before Conrail can abandon the Line. Conrail contends that the facts in the instant proceeding are distinguishable from those in *NS Discontinuance*, and therefore, that CSXT and NS do not need to seek authority to discontinue service over the Line before Conrail can abandon the Line. In *NS Discontinuance*, at 3, the Board concluded that CSXT and NS were required to seek discontinuance authority because Conrail acted as the agent for CSXT and NS in providing service to shippers on the Line.

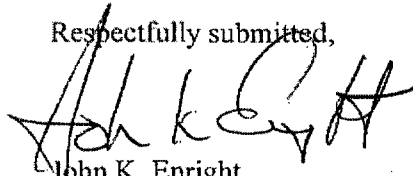
In this proceeding, the Line has not been operated since the mid-late 1990’s but, in any event, it was not being operated as of June 1, 1999, the “Split Date,” the date that CSXT and NS took over operation of a substantial portion of Conrail’s former network. Accordingly, Conrail has not acted as agent for CSXT or NS in providing common carrier service over the Line. It is Conrail’s position that since there has not been a demand for service over the Line or any service provided over the Line since before the “Split Date,” CSXT and NS have not provided common carrier service that requires them to receive authority to discontinue service. *See, e.g. Wisconsin Cent. Ltd. v. Surface Transp. Bd.*, 122 F.3d 881 (7th Cir. 1997); *Wisconsin & Michigan Railway Company—Discontinuance of Service Exemption—in Ashland and Iron Counties, WI and Gogebic County, MI*, STB Docket No. AB-440X (STB served October 22, 1997). Conrail requests the Board to conclude that CSXT and NS do not require discontinuance authority before Conrail can

consummate the abandonment of the Line (after compliance with the conditions imposed by the Board).

CONCLUSION

Conrail respectfully requests the Board to (1) toll the time for the filing of an OFA for only 10 days after Conrail notifies the Board that it has provided any additional information to Mr. Riffin required by 49 U.S.C. §10904(b) and the Board's rules at 49 C.F.R. §1252.27(a), if the Board decides to reopen the August 10 decision; and (2) not require CSXT and NS to seek discontinuance authority before Conrail can consummate the abandonment of the Line.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John K. Enright", is written over the typed name.

John K. Enright
Associate General Counsel
Consolidated Rail Corporation
1000 Howard Boulevard, 4th Floor
Mt. Laurel, NJ 08054
(856) 231-7206

Dated: September 12, 2006