

211424

JOHN D. HEFFNER, PLLC

1920 N St., N.W.
SUITE 800
WASHINGTON, D.C. 20036
(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net

RECEIVED
JUN 24 2004

BY HAND

June 24, 2004

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

RE: FD No. 34514, Raritan Central Railway, L.L.C.
Operation Exemption - Heller Industrial Parks, Inc.

**Reply to Petition for Stay filed by
Consolidated Rail Corporation**

Dear Mr. Williams:

On behalf of Raritan Central Railway, L.L.C., I am submitting an original and ten copies of its Reply to Petition for Stay filed by Consolidated Rail Corporation as well as a computer disk formatted in WordPerfect 8.0 containing this filing.

Please date stamp and return one copy of this filing for our records.

Sincerely yours,


John D. Heffner

Enclosures

cc: Mr. Eyal Shapira
All parties

ENTERED
Office of Proceedings

JUN 24 2004

Part of
Public Record

ORIGINAL

211424

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34514

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

REPLY OF RARITAN CENTRAL RAILWAY, L.L.C.
TO PETITION FOR STAY

RECEIVED
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Office of Proceedings

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JUN 24 2004

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Public Record

Respectfully submitted,

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

Attorney for Raritan
Railway, L.L.C.

ORIGINAL

Dated: June 21, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34514

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

REPLY OF RARITAN CENTRAL RAILWAY, L.L.C.
TO PETITION FOR STAY

I.
INTRODUCTION

This stay request concerns a verified notice of exemption filed with the Board under 49 CFR 1150.31 by Raritan Railway, L.L.C. ("Raritan") on June 15, 2004. By that exemption, Raritan seeks to acquire exclusive operating rights to a short segment of trackage inside and owned by Heller Industrial Parks, Inc. ("Heller"). Consolidated Rail Corporation ("Conrail"), purporting to act on behalf of itself and its owners CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Railway Company ("NS"), oppose this transaction and have filed the instant stay request.¹ Ordinarily, Raritan's exemption would have been effective June 22, 2004; however, Raritan's counsel agreed to a short postponement in the effective date until at

¹ Presumably, Petitioners will file a Petition for Revocation at some future date. Petitioners do not suggest on what basis they would seek to revoke Raritan's requested exemption. NS also filed A "Supplemental Statement" on June 21, 2004.

least the evening of June 24 due to his absence from the Washington area between June 18 and June 22, 2004.² This stay request should be rejected.

II.

FACTUAL BACKGROUND

The facts in this proceeding are very simple. Raritan understands that the subject trackage was originally constructed around 1971 by the now defunct Lehigh Valley Railroad pursuant to an agreement ("the access agreement") with Heller dated Dec. 19, 1971.³ Historically, the Lehigh Valley Railroad and later Conrail⁴ operated the tracks inside Heller's facility as "intrastate spur, industrial, team, switching, or side tracks" exempt from entry and exit regulation under 49 U.S.C. 10906. When CSXT and NS acquired control of Conrail and its rail properties in 1998, they established the Conrail Shared Assets Operation ("CSAO") encompassing most former Conrail trackage in Northern New Jersey including the subject rail property. After a series of derailments occurred resulting in damage to the

² Raritan's counsel authorized counsel for Conrail to represent that Raritan agreed to a short postponement of the effective date until at least Thursday evening June 24, 2004. Raritan advised Office of Proceedings Director David Konschnik by telephone that it would be agreeable to a short further extension to the effective date so that the Board could accept and consider this Reply. The STB subsequently extended that stay through June 25, 2004.

³ Copy attached as Exhibit A.

⁴ Under the Final System Plan, Conrail assumed the rights and obligations under the access agreement.

industrial park's track for which Conrail sought to hold Heller responsible, Heller terminated the access agreement and decided to replace it with another carrier. Then Heller and its tenant rail customers asked Raritan⁵ to assume operations at and over the subject rail facilities. Heller then entered into an agreement giving Raritan an exclusive license to provide the service currently provided by Conrail, effective August 15, 2004.

III.

ARGUMENT

The Board should recognize and deny Conrail's request for relief for what it is: an attempt to perpetuate unsatisfactory service. By denying this stay request, the Board should allow Heller to evict Conrail from its property while giving the customers located in that facility the opportunity to use a carrier of their and Heller's choosing: Raritan.

In deciding whether to grant a stay of administrative action, the Board considers (1) irreparable harm to petitioner absent a stay, (2) petitioner's likelihood of success on the merits, (3) any substantial harm to other interested parties, and (4) the public interest. See, e.g., Washington Metropolitan Area Transit Comm. V. Holiday Tours, Inc., 559 F.2d 841, 843. For the

⁵ In 2001, Raritan was established to serve another nearby industrial park (Raritan Central Business Park) formerly served by Conrail.

reasons stated below, Petitioners have not met that test.

In support of its request, Conrail states (1) it is unclear whether Raritan just seeks authority to operate over Heller's track or adjacent track owned by Conrail as well, (2) that any petition for revocation it files or request by any party for what it calls a "jurisdictional determination" (that is to say, subject to STB entry and exit regulatory jurisdiction) would not likely be decided on or before August 15, 2004, (3) that Raritan will likely have what Conrail calls "apparent authority" to provide common carrier operations over the subject trackage without any ruling that it is "jurisdictional", (4) that, assuming the subject trackage is "jurisdictional", Conrail cannot be forced off the line without the issuance of an "adverse abandonment" (or discontinuance) certificate, (5) that neither Raritan nor the shippers located there will suffer any irreparable injury if the *status quo* is maintained during the pendency of the revocation proceeding, and (6) that the public interest will be served by a stay. NS' adds that Raritan would replace Conrail's current competitive, nondiscriminatory access to both CSXT and NS with access to just one carrier, CSXT.

Regarding its alleged use of Conrail track, Raritan does not want to operate over Conrail track located outside Heller Industrial Park. To the extent that Raritan may have unintentionally indicated that it would operate over and serve

customers on Conrail-owned lines, it will amend its notice of exemption to delete any suggestion of operating over or serving customers on Conrail-owned track. Raritan only seeks to serve customers located inside Heller Industrial Park.

Regarding the balance of Petitioners' request, Raritan agrees that a determination of this dispute is indeed "jurisdictional." As to Conrail, it has historically taken the position that this trackage is intrastate spur, industrial, or switching trackage outside the Board's entry and exit jurisdiction. While Raritan has chosen to seek STB approval for its operations, it contends that Conrail cannot have it both ways. As the Board, the former Interstate Commerce Commission, and the courts have noted numerous times, the use to which trackage is put can change over time. See, e.g., STB FD No. 34145, Bulkmatic Railroad Corporation - Acquisition and Operation Exemption - Bulkmatic Transport Company (slip op. served Nov. 19, 2002 at 6-8 and cases cited therein). While one owner or user might regard the track as an unregulated spur, the next owner or user might treat the very same track as a regulated "line of railroad." See, Simmons v. I.C.C., 871 F.2d 702, 708-9 (7th Cir. 1989); STB FD No. 34114, Yolo Shortline Railroad Company - Lease And Operation Exemption - Port of Sacramento (served Feb. 3, 2003); STB FD No. 34442, Maritime Rail, LLC - Lease And Operation Exemption - Meadows Industrial Tracks (served Dec. 19, 2003); STB

FD No. 34392, New Jersey Rail Carrier LLC - Acquisition And Operation Exemption - Former Columbia Terminals, Kearney, NJ (served Jan, 28, 2004). Assuming *arguendo* that Conrail's use of the track is exempt spur, industrial, or switching trackage, Conrail needs no authority to terminate operations. It can do so without any Board approval. Should Conrail refuse to vacate the property by August 15, 2004, Heller can initiate eviction proceedings in the New Jersey courts.⁶

If the Board agrees with Raritan's assessment that Conrail treats the track as an exempt operation, there is no basis to grant a stay or to delay issuance of the exemption. Conversely, if the Board should decide that Conrail operates over "regulated" track, there is still no basis for the Board to stay the issuance of Raritan's exemption. The Board has never postponed the issuance of an exemption for a new tenant carrier seeking to assume operations from the incumbent tenant carrier pending the termination of the incumbent's operating rights. See, e.g., FD No. 32049 (renumbered AB-No. 379X), Cheatham County Rail Authority "Application and Petition" for Adverse Discontinuance, (decisions served July 21, Aug. 31, and Nov. 4, 1992) and FD No. 32049 (Sub-No.1), The Central of Tennessee Rail and Navigation Company, Incorporated-Modified Rail Certificate (ICC decisions

⁶ Heller is awaiting Conrail's response to its letter terminating the access agreement before deciding its future strategy.

served July 21 and Aug. 31, 1992) (where the ICC declined to postpone the effectiveness of the new carrier's operating authority pending a decision on an adverse discontinuance application involving the incumbent). The Board can grant Raritan's request for an operating exemption while it considers the jurisdictional nature of the track and decides any adverse discontinuance application that Heller as the landowner might chose to file. Indeed, in ruling on that case, Raritan wants the Board to consider a statement it made in STB Docket No. AB-596, New York City Economic Development Corporation - Adverse Abandonment - New York Cross Harbor Railroad in Brooklyn, NY (slip op. served May 12, 2003 at 7), to the effect that "our jurisdiction should not be a bar to the owner's attempt to evict a tenant that it deems to be troublesome and devote the property to another use."

Conrail and its owners have failed to identify any harm, irreparable or otherwise, they may suffer as a result of Raritan's assumption of operations. Conrail will continue to receive all of the traffic originating and terminating at the industrial park and its owners will continue to enjoy the freight revenues generated by this traffic. In fact, they will benefit by shedding an expensive, labor intensive operation. Nor will the operations of Conrail (or its owners) be compromised as Raritan will replace that of Conrail. During the interim, both

parties will need to coordinate operations as the ICC advocated in Cheatham County, supra.

Moreover, Petitioners have not shown that they are likely to prevail on the merits. Whether or not the track is "jurisdictional," the STB can grant Raritan's exemption request under the agency's precedent leaving the determination of any contractual rights to either negotiation or commercial litigation.

With respect to the other grounds for a stay request, Petitioners fail to identify the harm that the shippers and Heller will suffer if Conrail remains on the property and fails to show how it will be adversely affected if Raritan's exemption becomes effective promptly. But Raritan submits as Exhibit B a letter attesting to the harm that will befall rail customers located at the industrial park if Conrail continues to serve them. Finally, Raritan notes with respect to the public interest criterion for a stay that Conrail appears to confuse the public interest in the form of the rail service needs to the public with those of its own private interest.

Raritan's reply to NS' concerns is simple. As the Board knows well, it is the rail shippers - not a carrier - which determine the routing of traffic. Raritan intends to offer customers nondiscriminatory access to both NS and CSXT. NS' fear that it will not participate in the traffic is of NS' own making.

It is to Raritan's advantage to satisfy customer routing requests and offer equal, nondiscriminatory access to both NS and CSXT. Otherwise, they will opt to use motor carrier service directly or transload freight to another rail terminal.

IV.

CONCLUSION

Petitioners have not supported their stay request through evidence or legal argument. Raritan respectfully requests that the Board deny their request and promptly issue an exemption authorizing operations at the Heller Industrial Park.

Respectfully submitted,



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

Attorney for Raritan
Railway, L.L.C.

Dated: June 24, 2004

EXHIBIT A

SECRETARY'S 182 089
REGISTRY NO.

D 402

LEHIGH VALLEY RAILROAD COMPANY
SIDETRACK AGREEMENT

AGREEMENT, made December 19, 19 73 between LEHIGH VALLEY RAILROAD COMPANY (the "Railroad") and the undersigned "Shipper" or "Shippers".

The parties having under consideration the location of one or more sidetracks and appurtenant facilities as described below (the "sidetracks") agree that the terms and conditions set forth below and on the reverse hereof shall apply to the construction, ownership, maintenance and use thereof. The attached plan shows the location of the facilities as presently agreed on.

Ownership and duty of maintenance shall be as follows:

Track or Facility	From	To	Owner	Duty of Maintenance
Sidetrack A-B-C-D-3925' In Length Including #8 Turnout & Derail	A	D		
Portion 312' In Length Including 1 #8 Turnout	A	B	* Railroad	* Railroad
Portion 3613' In Length Including Derail	B	D	Shipper Owner	Shipper Owner
Side Track C-E 3537' In Length Including 1 #8 Turnout	C	E	Shipper Owner	Shipper Owner

* Portion A to B (312') Including 1 #8 Turnout) to be constructed at sole cost and expense of Shipper. Upon completion Railroad owns and maintains Portion A to B.

Shipper shall equip gate, if any, shown on attached plan with a device to secure it when in an open position. Any locks used are to be of a type approved by Railroad.

Location: M. P. 24 + 5160 Raritan Br., Nixon, New Jersey

Number and date of plan: D 2071002 Revised December 18, 1973

For additional terms and conditions see attached rider dated _____

Agreements cancelled (abbreviate): _____

Any waiver by Railroad of any right herein shall not be deemed a waiver as to any breach subsequently occurring.

This agreement shall be effective as of the date the sidetracks are placed in service and shall be binding upon and enure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the above date.

CONSENT:

The undersigned hereby consents to the installation, maintenance and use of the sidetracks across its property.

ATTEST:

TITLE:

LEHIGH VALLEY RAILROAD COMPANY

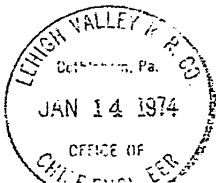
By:

CHIEF ENGINEER

SHIPPER OWNER: I. HELLER CONSTRUCTION CO., INC.

By:

TITLE:



STANDARD TERMS AND CONDITIONS

1. OWNERSHIP, CONSTRUCTION, MAINTENANCE. (a) The cost of construction shall in each case be borne by the party listed on the face hereof as owner. Each Shipper shall have the obligation of furnishing such appurtenances to portions of sidetracks owned by it as may be required by Railroad. The party responsible for maintenance shall have the obligation of furnishing all labor and materials required for such maintenance. Maintenance shall include repair and renewal, and removal of snow, ice and debris. Shippers shall keep all hoppers and pits safely covered when not in use.

(b) All construction and maintenance work to be done or paid for by a Shipper shall be done at such times, in such manner and with such materials as shall be satisfactory to Railroad. Where ownership of sidetracks and duty of maintenance are provided to be in a Shipper if any of the materials which make up the same are furnished by Railroad they shall remain the property of Railroad until paid for.

(c) Subject to all the terms of this agreement, the appropriate Shipper, provided it first obtain the Railroad's written consent, may make changes in or install facilities other than as provided herein (such as, without limitation, road crossings, hoppers, pits, trestles, loading or unloading devices, pipe lines or power lines, additional or relocated sidetracks or extensions) over, under or alongside the sidetracks.

(d) Each Shipper shall be responsible for all taxes assessed on the portions of sidetracks owned by it and shall make prompt reimbursement for taxes paid by Railroad in its behalf. If such portions of sidetracks are taxed or assessed otherwise than separately such Shipper shall reimburse Railroad for such taxes as Railroad shall determine to be properly allocated to said portions of sidetracks.

2. LAND. The Shippers at their own expense shall furnish the land necessary for portions of sidetracks located outside of Railroad's right of way, procure all licenses, orders and franchises now or hereafter necessary for the construction, maintenance, operation and removal thereof and discharge all obligations imposed by such licenses, orders or franchises or reimburse Railroad for the expense of discharging the same and shall also secure to Railroad the right to enter upon said land at all times for the purpose of constructing, maintaining, operating and removing sidetracks.

3. OPERATION. (a) Railroad's trains, engines, cars and other rolling equipment shall at all times have the right of way and whenever they are operating in the vicinity all attempts to cross or use sidetracks by any Shipper, its officers, employees, agents and invitees shall cease.

(b) Any movement of cars or other equipment by any Shipper shall be at its own risk and restricted to movements between clearance point and end of track.

4. LIABILITY. (a) The use of railroad locomotives involving risk of fire, each Shipper (except where Railroad is solely negligent) releases Railroad from and indemnifies it against liability for loss or damage to property of said Shipper and property on its premises arising from fire caused by locomotives operating on sidetracks or in their vicinity for the purpose of serving said Shipper except railroad cars and shipments in course of transportation, other rolling equipment and other property of Railroad.

(b) Each Shipper agrees to indemnify Railroad against and compensate it for loss, damage or injury (including death) caused by or growing out of any act or omission of such Shipper, its officers, agents, employees or invitees to any person whatsoever or to the property of any of the parties hereto, their officers, agents or employees or of any other person or corporation. Subsidence of the surface of property owned or used by a Shipper shall be considered an omission for purposes of this paragraph.

(c) In any case where such loss, damage or injury shall occur by reason of a departure from Article 6 hereof Shipper's said liability for compensation and indemnity shall exist notwithstanding Railroad negligence. Exceptions shown on attached plan and permitted under Article 6 shall also be subject to the foregoing provision for liability notwithstanding Railroad negligence. In any other case (except as provided in paragraph (a) of this Article) where act or omission of a Shipper or Shippers and negligence of Railroad are contributing factors such loss, damage or injury shall be shared equally by the Railroad and such Shipper or Shippers.

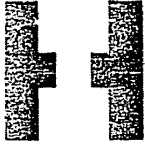
5. USE OF TRACK. Each Shipper agrees not to authorize or permit the use of said sidetracks by or for the benefit of any other person or persons without the written consent of Railroad, and that Railroad may use such sidetracks in connection with any extension of the same which Railroad may desire to construct for the purpose of reaching business or industries other than that of such Shipper, and Railroad may deliver, receive, handle and transport the freight of others along or upon said sidetracks or any extension thereof, in such manner as not to interfere unnecessarily or unreasonably with the handling of the freight of such Shipper.

6. CLEARANCES. Except as shown on attached plan, no Shipper shall allow any structure or obstruction to remain over any sidetrack or adjacent thereto at any point nearer than twenty-two feet (22') measured vertically above top of rail if structure is over the sidetrack or nearer than eight feet, six inches (8'6") measured laterally from the center line of any straight portion or nearer than eight feet, six inches (8'6") plus the middle ordinate of a forty foot (40') chord thereof to the center line of any curved portion of said sidetrack except that said vertical clearance may be reduced to eighteen feet (18') above top of rail and said lateral clearance may be reduced to eight feet (8') at entrances to and inside buildings and that platforms erected adjacent to any sidetrack extending not more than four feet (4') vertically above top of rail may have a lateral clearance of eight feet (8') from the center line of said sidetrack providing a full eight foot, six inch (8'6") clearance is maintained on opposite side of track or the track center to any adjacent track is not less than fourteen feet (14'), said clearances being for straight track only and curvatures to be compensated for as outlined above; wires and cables shall have a clearance of twenty-seven feet (27') above top of rail.

7. TERMINATION, REMOVAL. Violation by any Shipper of any covenant herein shall give Railroad the right to terminate this agreement forthwith as to such Shipper; otherwise it shall continue in effect between Railroad and each Shipper until terminated by Railroad as to any Shipper, or by any Shipper as to itself, by sixty (60) days' written notice served personally or by mail to the last known address. Upon termination as to any Shipper (1) Railroad shall have the right at its expense to enter upon the property of such Shipper and remove any or all sidetrack material belonging to Railroad; and (2) such Shipper within thirty (30) days shall at its own expense, in a manner satisfactory to Railroad, remove from Railroad's right of way all portions of sidetracks belonging to such Shipper and restore the right of way to a condition satisfactory to Railroad or pay Railroad for doing so; provided, however, that Railroad shall have the right to purchase the same at their then fair value.

8. NONPERFORMANCE. Whenever any Shipper shall fail to perform any of the obligations imposed on it by this agreement Railroad may at its option perform the same at the expense of said Shipper; or may on five (5) days' written notice, disconnect the sidetracks or withhold service.

9. PRIOR AGREEMENTS. The agreements listed on the face hereof between the parties hereto or their predecessors are hereby cancelled.



I. Heller

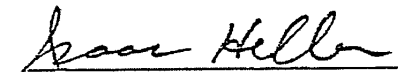
205 Mill Road
Edison, N. J. 08817
(201) 287-4880

EXHIBIT

Heller Park, Edison, New Jersey, is presently served by Conrail pursuant to a Sidetrack Agreement dated December 19, 1973, between Lehigh Valley Railroad Company and I. Heller Construction Company, Inc.; Secretary's Registry No. 182-089.

Pending the execution of a new Sidetrack Agreement between I. Heller and Conrail, I. Heller hereby grants to Conrail the right to use I. Heller's existing tracks as defined in the aforementioned Sidetrack Agreement in order to serve the industry siding of the facility of Linden Warehouse and Distribution Co., et. al., located at 11 Distribution Boulevard, Heller Park, Edison, New Jersey 08817.

I. HELLER CONSTRUCTION COMPANY, INC.

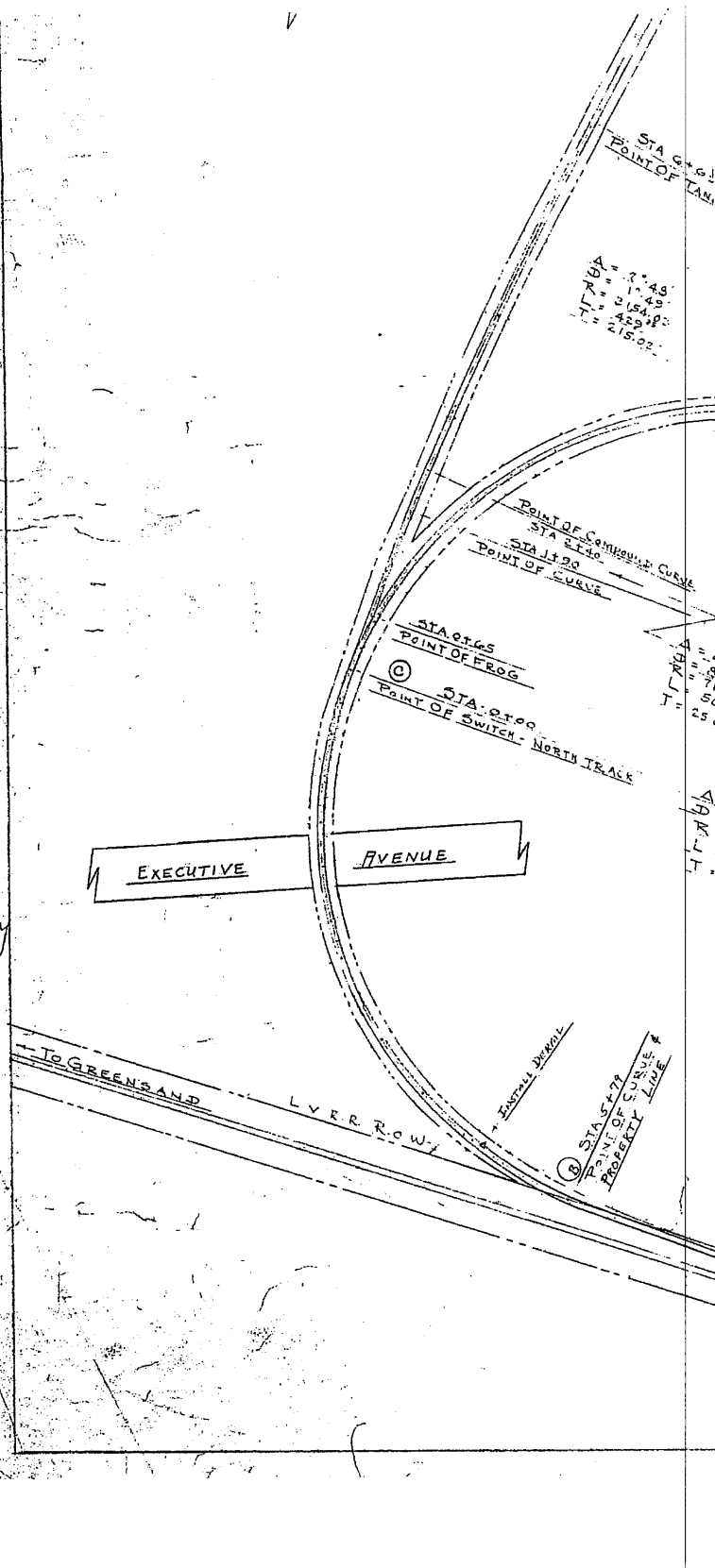

I. HELLER, PRESIDENT

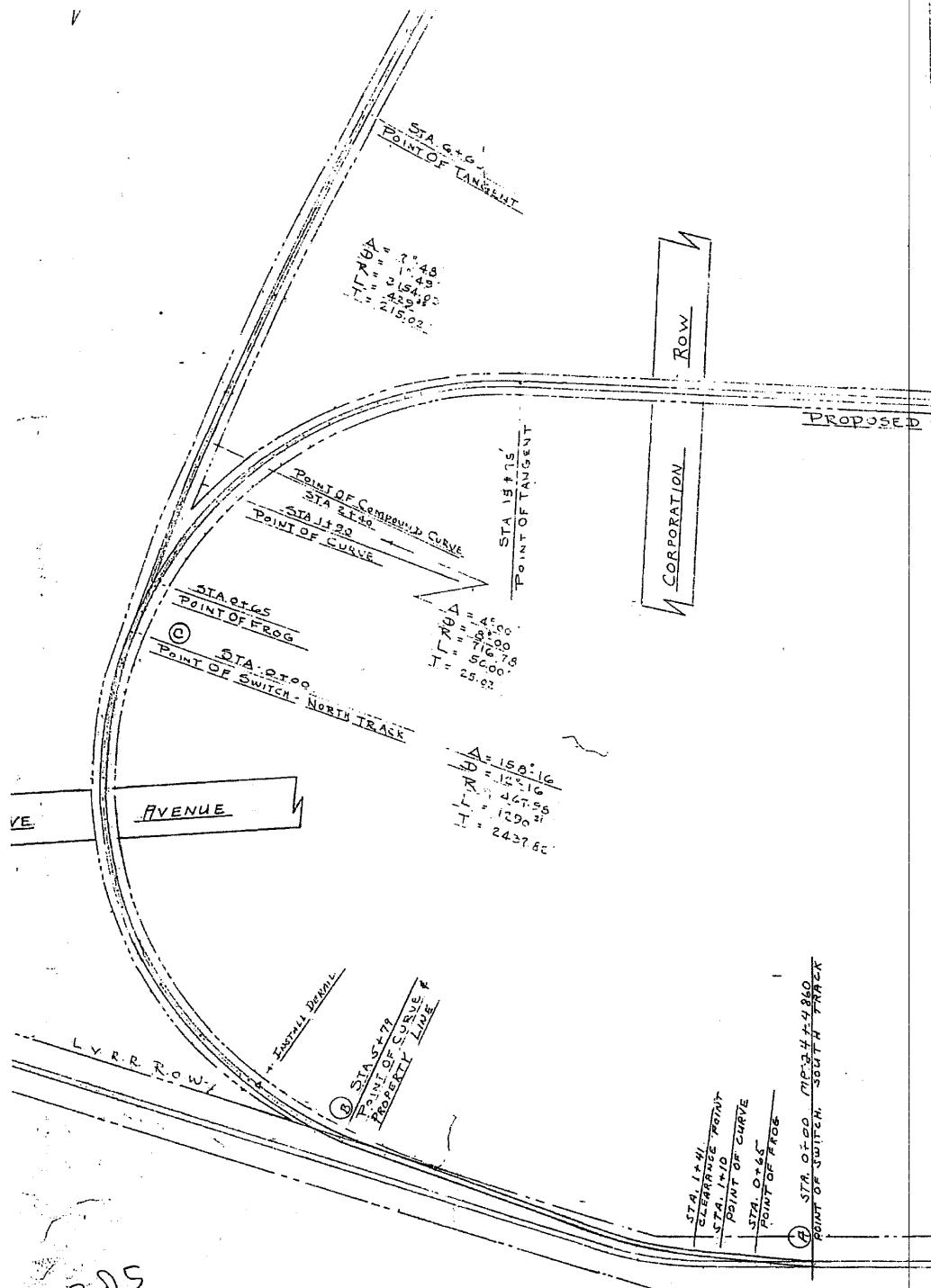
September 23, 1977

Ingenuity in distribution center
site location and construction.

Plan attached
to 10/19/23
Lehigh Valley
Railroad Company
Side track
Agreement

185

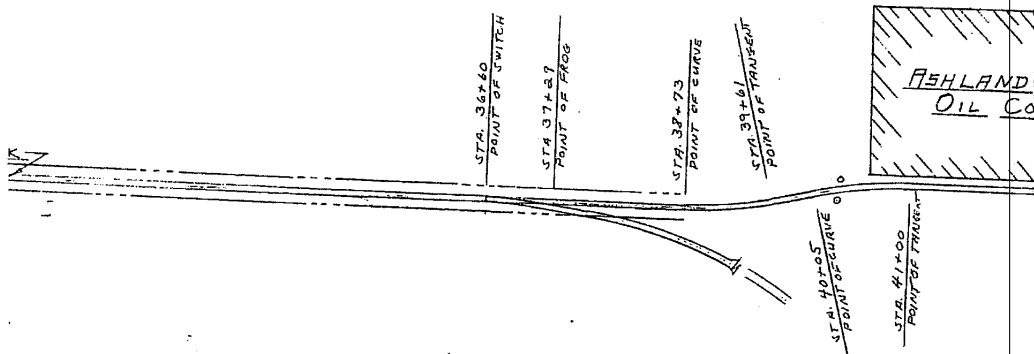




PROPOSED SOUTH TRACK
D. 25 FT RAILROAD R.O.W.

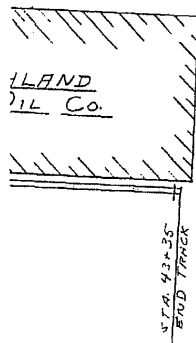
LEHIGH VALLEY RAILROAD - RARITAN BRANCH

375



RARITAN BRANCH

4 AS



MILL ROAD (NIXON ROAD)

TO RABBITAN JCT.

LEHIGH VALLEY RAILROAD
NEW YORK DIVISION RABBITAN BRANCH
PROPOSED TRACK LAYOUT
FOR
I HELLER INDUSTRIAL PARK
NIXON, N. J.

OFFICE OF CHIEF ENG'R
SCALE 1" = 100'

DETHLEFEN, PA
SEPTEMBER 24, 1973
REV. NOV. 19, 1973
REV. DEC. 18, 1973
REV. MARCH 26, 1974

D 2071002

S of S

EXHIBIT B



20 Executive Avenue, Edison, New Jersey 08817
Tel: 908-248-1333 Fax: 908-248-1164

June 23, 2004

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

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

Dear Secretary Williams:

I am writing in connection with the above-captioned proceeding.

Superior Warehousing Systems, Inc. (Superior) is a rail-served customer located inside Heller Industrial Park (Heller) at Edison, NJ. Currently, Consolidated Rail Corporation (Conrail) provides rail service to customers located at that facility. We have been a tenant in Heller Park and a customer of Conrail for fourteen years. Recently, Heller terminated Conrail's right to provide service in part due to concerns we have expressed to Heller about deficiencies in service and lack of respect for our property.

Heller has selected and signed an agreement with Raritan Central Railway, L.L.C. (Raritan), to act as the carrier to replace Conrail for providing service at the park. It is my understanding that Raritan has sought authority from your agency in the above-captioned docket to provide that service. I have met with Raritan's President and feel confident that his company can provide service that is more responsive to Superior's needs than that historically provided by Conrail. We take exception to the statements made by the Petitioners on page 6, paragraph 2.

Superior will suffer substantial injury as a result of maintaining the status quo, pending results of a revocation of proceedings.

- 1) We have made many complaints to Conrail regarding the service and the placements of our cars to our facility.
 - a. Loaded cars are consistently placed for us at locations that are not even ours, making the unloading impossible and further delaying the receipts of the customer's goods, affecting orders and service to their customers.
 - b. A change was made to the notification of cars received by Norfolk Southern so that we are now notified that cars constructively placed after business hours and

- 2) Cars are ordered each day and requested to be spotted at specific unloading doors to facilitate speedy unloading and efficient staging in our warehouse for better service to our accounts. Conrail ignores these specific requests and places the cars to their convenience, resulting in delay of unloading.
- 3) As a result of the misplacements of cars ordered, it often results in demurrage.
- 4) There have been several de-railments on the tracks caused by negligent operation by the Conrail drill crew resulting in our being billed by Heller Parks to repair the tracks. Conrail consistently denies any responsibility for the damage to the rail bed and we continue to pay for the full cost of the derailment. In fact, in one instance, two derailments occurred over the same space of track within one week. This negligence cost us hundreds of thousands of dollars, which we cannot afford.
- 5) On a Friday afternoon in late April, we were notified by Conrail that they would be discontinuing their night crew effective immediately and we would have to re-work our drill time. We complained that they couldn't make such a significant change in operation without notice. This change was rescinded and our service was un-interrupted. We have been told that the service will be reduced to three times per week but the timeframe has not been disclosed.

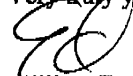
Part of the same paragraph on page 6 it is stated that Conrail is prepared to continue providing the same service under the same condition during the revocation proceeding. No thank you we cannot afford it.

We support the Verified Notice of Exemption filed by Raritan Central Railway, LLC ("Raritan") on June 15, 2004 for the following reasons:

- 1) They will provide multiple drills with the same day to improve service. On many occasions, the improved service will reduce any demurrage charges to us and will improve the flow of cars to the respective carriers.
- 2) Raritan is going to be fully responsible for all track maintainance and de-railment costs.
- 3) The additional business that our cars generate will enure to the benefit of Raritan for a more efficient operation.
- 4) Raritan has indicated to us that with this improved operation they will be able to direct warehouse business, cross dock transloading revenue to us.

We would be able to enter into a working partner relationship which would enure to both our benefit. We plead that you deny the Petition to Stay Exemption forthwith and let the forces of competition survive to the benefit of all concerned. Accordingly, I urge the Board to grant Raritan's request for an operating exemption as expeditiously as possible.

Very truly yours,



William E. Gatto, President
Superior Warehousing Systems, Inc.

CC: All Parties

EXHIBIT C



I. Heller

June 24, 2004

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

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

Dear Secretary Williams:

I am writing in connection with the above-captioned proceeding.

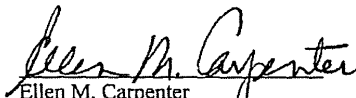
Heller Industrial Parks, Inc. (Heller) manages a rail-served industrial park located in Edison, New Jersey. Currently, pursuant to an Agreement dated December 19, 1973 between Lehigh Valley Railroad Company and I. Heller Construction Co., Inc. (predessor-in-interest to Heller), Consolidated Rail Corporation (Conrail) provides rail service over tracks managed by Heller to various customers located within this privately owned industrial park. By letter dated June 1, 2004, as permitted under the provisions of the aforesaid Agreement, Heller terminated Conrail's right to use our property. The Agreement permits Heller to terminate Conrail's use of our property for any reason on 60 days' notice. A copy of the Agreement and our letter of termination is also enclosed for your information.

In order that our tenants can continue to receive rail service, we negotiated and signed a License Agreement with Raritan Central Railway, L.L.C. (Raritan), to provide service over the tracks within the private industrial park we manage. It is our understanding that Raritan has sought authority from your agency in the above-captioned docket to provide service over the tracks within the private industrial park we manage.

My purpose in writing is to urge the Board to grant Raritan's request for an operating exemption as expeditiously as possible despite objections filed by Conrail, CSX and Norfolk Southern Railway.

Sincerely yours,

Heller Industrial Parks, Inc.


Ellen M. Carpenter
Executive Vice President

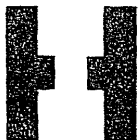
Enclosures

cc: John D. Heffner, Esq.
All parties

205 Mill Road
Edison, NJ 08837
(732) 287-4880
FAX (732) 287-5033

Ingenuity in distribution center
site location and construction.

EXHIBIT D



I. Heller

205 Mill Road
Edison, NJ 08837
(732) 287-4880
FAX (732) 287-5033

June 1, 2004

David M. LeVan
Chairman, President and Chief Executive Officer
Consolidated Rail Corporation
2001 Market St., 16th Floor
Philadelphia Pennsylvania 19103

Re: Lehigh Valley Railroad Company
Sidetrack Agreement
Dated December 19, 1973

Dear Sir Madam:

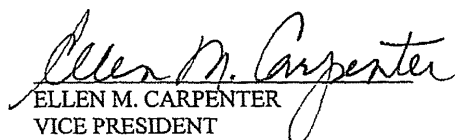
This letter shall serve as notice that we have entered into an exclusive agreement with a third party to operate rail service in and through Heller Park, Edison, New Jersey covered by the above referenced sidetrack agreement.

Accordingly, this letter shall further serve as notice that, effective sixty (60) days after your receipt of this letter, the above referenced Sidetrack Agreement, and your company's right to use the tracks identified in said agreement, is hereby terminated.

If you have any questions or comments, please don't hesitate to contact me at the phone number listed above, or by electronic mail at ecarpenter@hellerpark.com.

Sincerely,

I. HELLER CONSTRUCTION CO., INC.


ELLEN M. CARPENTER
VICE PRESIDENT

cc: Conrail Yard Master
Metuchen, New Jersey

Consolidated Rail Corporation
Real Estate Services
1000 Howard Blvd., 4th Floor
Mt. Laurel, New Jersey 08054

Ingenuity in distribution center
site location and construction.

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that I have this 24th day of June, 2004, served by fax and by first class mail, a copy of the Reply of Raritan Central Railway, L.L.C. to the Petition for Stay upon all parties to this proceeding.


John D. Heffner