

EC
FR-7035-01

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 29085

SERVICE DATE

JAN 22 1980

CONSOLIDATED RAIL CORPORATION-MERGER-RARITAN RIVER RAILROAD
COMPANY, EXEMPTION UNDER 49 U.S.C. 10505 FROM 49 U.S.C.
11343-11347

AGENCY: INTERSTATE COMMERCE COMMISSION

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the merger of the Raritan River Railroad Company into the Consolidated Rail Corporation, from the requirements of 49 U.S.C. 11343-11347, which requires prior consideration and approval of the transaction by the Commission.

DATE: Effective on the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg
(202)-275-7246.

SUPPLEMENTARY INFORMATION:

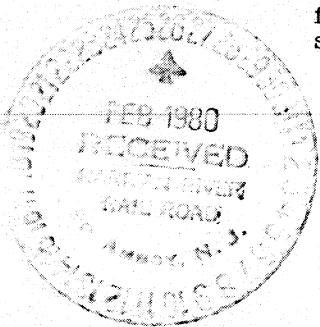
PROCEDURAL BACKGROUND

Consolidated Rail Corporation (Conrail) and the Raritan River Railroad Company (Raritan) filed a petition for exemption under 49 U.S.C. §10505 on June 20, 1979, requesting that their proposed merger be exempted from the requirements of obtaining prior Commission approval under 49 U.S.C. §§11343-11347. In response to this petition we published a notice in the Federal Register on August 20, 1979, 44 Fed. Reg. 48846 (1979) requesting comments on the proposed exemption. Comments in opposition to the proposed exemption were filed by various shippers and receivers who presently utilize the services of Raritan. No comments in favor of the exemption were filed.

The notice of proposed exemption sets forth the facts in this proceeding. Certain shippers and receivers have challenged the basis for various allegations made by Conrail in their petition.

Continental Plastic Containers; E.R. Squibb & Sons, Inc. (Squibb); H. & F. Warehouse; Personal Products Company; Frank A. Greek & Son, Inc. (Greek); Permacel; Chicopee; Hercules, Inc.; and NL Titanium Pigments jointly object to the grant of the proposed exemption. They allege that in 1978 Raritan handled more than 9,000 carloads of their traffic. These opponents state that Raritan's importance to the economic growth of the area cannot be understated.

It is alleged that the Raritan management now provides flexibility in daily routine in order to accommodate shipping and receiving variations. The opponents state that



Raritan's employee work rules differ from Conrail's and enhance the ability of the road to respond to the changing needs of its customers. It is felt that the planned merger into Conrail would eliminate these beneficial aspects of Raritan. Further, Conrail's claimed potential savings in cost due to the elimination of duplicate facilities and reduction of work force is challenged.

These parties state that any decline in rail service could necessitate an increase in the use of motor common carriage which would increase freight costs, effect future plans for expansion, and counter efforts to conserve fuel. Parties would like an opportunity to present these objections concerning the proposed merger.

Equipment Rental Corp. (Equipment), an intermodal distribution service served by Raritan, has filed a comment stating its need for Raritan's continued good service. Raritan's pride of workmanship is cited as being directly related to the excellent service now provided. Equipment states that in view of Conrail's past performance the present service would deteriorate if the merger occurs.

Greek owns a 150 acre industrial park in East Brunswick, NJ, that houses several major users of the Raritan. It has filed a separate comment alleging that the merger would seriously decrease the quality of service to its tenants. It is alleged that a full hearing is necessary in order for Conrail to demonstrate how it intends to maintain or improve Raritan service.

Squibb and Chicopee have each filed separate comments stating that a public hearing on the proposed transaction is vital. They doubt Conrail's ability to maintain the same level of service now provided by Raritan.

Continental Group Inc., has filed a comment urging that a public hearing be held on the proposed merger. It states that industrial users served by the Raritan should be given an opportunity to present their views.

The State of New Jersey, Department of Transportation has filed a comment objecting to the exemption. It states that shippers and receivers on the Raritan have a right to present their objections to this merger at a formal hearing. Further, it states that Conrail has a obligation to answer any questions raised by the involved shippers as to continued reliability and frequency of service.

The Brotherhood of Locomotive Engineers has filed a comment stating that the proposed merger would have an adverse effect on the locomotive engineers of the applicant, as well as locomotive engineers on other railroad carriers effected. It has requested that we deny the request for exemption. However, if the exemption is granted conditions for the protection of employees as prescribed in 49 U.S.C. § 11347 should be imposed.

RAIL EXEMPTION AUTHORITY

Conrail seeks exemption of its merger with Raritan from 49 U.S.C. §§11343-11347 under 49 U.S.C. 10505. This section provides that the Commission can exempt a transaction after an opportunity for a proceeding if it is limited in scope, not necessary to carry out the national transportation policy, would be an unreasonable burden, and would serve little or no useful purpose.

Limited Scope

Conrail currently controls Raritan. Since April 18, 1979, all the outstanding stock of Raritan has been owned by Conrail. The proposed merger is within the corporate family and is a limited transaction.

Additionally, the merger is of minor geographic significance. Conrail operates in 16 states, the District of Columbia, and two Canadian provinces. Raritan is a class III railroad owning 17.2 miles of railroad comprising 32 miles of track only extending from South Amboy to New Brunswick, NJ. It does not connect with any railroad other than Conrail.

The transaction will have a limited effect on railroad employees involved. Raritan has an average of 52 employees and Conrail hopes to eliminate approximately 16 administrative and supervisory positions. However, to the extent that employees would be covered under the protection provided by labor protective conditions enacted in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) affirmed by slip opinion of U.S. Court of Appeals for 2nd Circuit, November 7, 1979, protection will be provided.

The transaction will not affect competitors of Conrail and Raritan. The purpose of the merger is to consolidate traffic, equipment, and operations. This will allow for more efficient and expeditious handling of traffic. Raritan has no independent existence from Conrail as far as competition for freight traffic is concerned, and no change in rail competition will result from the merger.

The exemption proposed by Conrail and Raritan is of restricted scope. The merger is limited to: (1) a corporate family; (2) a minor geographic area; (3) a minor impact on employees, and (4) no effect on competition for freight traffic.

Since the proposed transaction is of limited scope, we may now proceed to consider the other criteria.

Necessity to Carry Out the National Transportation Policy.

The transportation policy stated at 49 U.S.C. §10101 requires us to provide impartial regulation of modes of transportation subject to Subtitle IV. Impartial regulation

is achieved through: (1) recognizing and preserving the inherent advantage of each mode; (2) promoting safe, adequate, economical, and efficient transportation; (3) encouraging sound economic conditions in transportation, including sound economic conditions among carriers; (4) encouraging the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices; (5) cooperating with each State on transportation matters; and (6) encouraging fair wages and working conditions in the transportation industry.

Regulation of the Conrail and Raritan merger is not necessary to carry out the goals of the National Transportation Policy. It is a merger within a corporate family, and will not affect the considerations of the transportation policy since elimination of a corporate entity will be the only change resulting from the transaction. Elimination of Raritan will reduce duplicative record and book keeping. It will also simplify the corporate structure of Conrail.

Unreasonable Burden on a Person

The Commission's Consolidation Procedures require a complete application to be filed in order for a decision to be reached within the time constraints of 49 U.S.C. §11345. The submission of the material necessary to comply with the Consolidation Procedures will be a time consuming task requiring the dedication of financial resources. To establish such a record in this transaction would require Conrail and Raritan to submit a complete application under the requirements imposed by 49 U.S.C. §11344 and would place an unreasonable burden upon them. Our granting of the petition will allow Conrail to avoid the burden of complying with the I.C.C. Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights, and Lease Procedures, 49 C.F.R. Part 1111, (1978) (Consolidation Procedures).

Little or no Useful Public Purpose

In determining whether or not to approve a merger, the Commission decides if it is in the public interest. In reaching this determination we rely upon the applications submitted pursuant to the Consolidation Procedures and any comments by the parties.

Here we have received comments through various shippers and receivers objecting to the merger since it would allegedly decrease the present high level of service provided by Raritan. The opponents fear that Raritan's pride and adaptability would disappear after the merger. A full proceeding under 49 U.S.C. §11343 requiring an application under the Consolidation Procedures would not alleviate the opponents' fears.

Raritan is wholly owned by Conrail. Our permission to affect a corporate simplification should not result in a change in the level of service. Raritan's present service is conducted under the ownership of its parent, Conrail. This will not change. The same service level and dedication or personnel should continue as before. It would be a wasteful allocation of resources to require the filing of an application under the Consolidation Procedures.

Because this is a merger within a corporate family, involving little substantive change, our review of it would serve no useful purpose.

CONCLUSION

We conclude that exemption of the merger between Conrail and Raritan from 49 U.S.C. §§11343-11347 meets the statutory requirements of 49 U.S.C. §10505. The power to exempt from regulation enables the Commission and railroads to commit their limited resources in areas where they are most needed by enabling the Commission to effectively deregulate those areas which have no significant bearing on the overall regulatory scheme. In enacting 49 U.S.C. §10505, Congress clearly intended us to exempt certain limited transactions from our regulatory power. This is one such transaction.

We find:

(1) The application of the requirements of 49 U.S.C. §§ 11343-11347 for the merger of the Raritan River Railroad Company into the Consolidate Rail Corporation is of a limited scope and (a) is not necessary to carry out the transportation policy of section 10101, (b) would be an unreasonable burden on Conrail and Raritan, and (c) would serve little or no useful purpose.

(2) This decision is not a major Federal action significantly affecting energy consumption or the quality of of the human environment.

It is ordered:

(1) Consolidated Rail Corporation and Raritan River Railroad Company are exempted under 49 U.S.C. §10505 from the requirements of 49 U.S.C. §§11343-11347 for the limited purpose of merging the Raritan into Conrail, subject to the conditions imposed for the protection of employees imposed in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), affirmed by slip opinion of U.S. Court of Appeals for 2nd Circuit, November 7, 1979.

(2) If Raritan is merged into Conrail, Conrail shall within 60 days of the merger submit three copies of a sworn statement showing all general entries required to record the transaction.

(3) Public notice of our action shall be given to the general public by delivery of the copy of this decision to the Director, Federal Register, for publication therein.

(4) This exemption will continue in effect for 90 days from the effective date of this decision. Conrail and Raritan must consummate this merger during that time in order to take advantage of the exemption which we have granted.

(5) This decision shall be effective on the date of publication in the Federal Register.

DATED: January 11, 1980.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Chairman O'Neal not participating. Vice Chairman Stafford, joined by Commissioner Clapp, dissenting. Commissioner Christian absent and not participating.

AGATHA L. MERGENOVICH
Secretary

(SEAL)

COMMISSIONER STAFFORD, JOINED BY COMMISSIONER CLAPP, dissenting:

I fully believe that the Congress intended this Commission to exercise its discretion in utilizing 49 U.S.C. §10505 to exempt certain rail transactions. Accordingly, the automatic reliance on those provisions is wholly inappropriate, especially in the situation at hand where there is vigorous opposition to such a procedure. Use of the Section 10505 provisions will deny shippers and other interested persons the opportunity to fully develop their positions and will, unfortunately, remove the burden of proof from the shoulders of petitioners. A more equitable approach would be to grant petitioners extensive waivers from the requirements of 49 C.F.R. 1111, but to require them to proceed under 49 U.S.C. §11343 et seq.

2 DISSIDENTS
1 NOW VOTE

4 - FOR 2 AGAINST
Some Majority!!

3
1 ABSENT NO VOTE

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