

January 21, 1980 at Washington, DC. is changed to Subpoena Conference on January 22, 1980 at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 148497F, Tiled Motor Lines, Inc., now assigned for hearing on January 22, 1980 at Durham, NC. is canceled and reassigned to January 23, 1980 (4 days), at Greensboro, NC, and will be held on the Second Floor Court Room, U.S. Post Office & Courthouse Building, Greensboro, NC.

MC 129615 (Sub-47F), American International Driveway Extension—Hawaii, now being assigned for hearing on April 2, 1980 (8 days), at Los Angeles, CA. in a hearing room to be designated later.

MC 106139 (Sub-615F), E. L. Murphy Trucking Company, now assigned for hearing on April 7, 1980 (2 days), at San Francisco, CA. in a hearing room to be designated later.

MC 148441 (Sub-57F), A.B.C. Trucking, Inc., now being assigned for hearing on April 9, 1980 (3 days), at San Francisco, CA. in a hearing room to be designated later.

MC 146399 (Sub-31F), Shay Distributing Co., Inc., now being assigned for hearing on March 17, 1980 (2 days), at Los Angeles, CA. location of hearing room will be designated later.

MC-C-10308 The Gray Line Tours Company -V- Stuart Alan McSwick, d.b.a. the Co-Ordinators, now being assigned for hearing on March 12, 1980 (2 days) at Los Angeles, CA. location of hearing room will be designated later.

MC-C-10254F, Caroline Coach Company, Safety Transit Lines, and Moore Brothers Transportation Company v. E.S. Charter Service, now assigned for hearing on January 29, 1980 (2 days) at Raleigh, NC in Room No. 440, Federal Bldg., Century Station, 300 Fayetteville Street Mall.

MC 1515 (Sub-253F), Greyhound Lines, Inc., now assigned for continued hearing on January 29, 1980 (4 days) at the Marriott Hotel, Courthouse & International Blvd., N.E. Atlanta, GA.

No. 37195, Southern Pacific Transportation Company—Rates and Classification of Iron Ore within Texas, now assigned for hearing on January 29, 1980 (5 days) at Dallas, TX is postponed indefinitely.

MC 120061 (Sub-20F), Bestway Express, Inc., now assigned for hearing on February 25, 1980 (5 days) at Nashville, TN will be held in the Ramada Inn Airport, Spence Lane, instead of in Room No. 651, Old Federal Bldg., 501 Broadway.

AB-35 (Sub-20F), Seaboard Coast Line Railroad Company Abandonment near Gordonville and Bartow in Polk County, FL, now assigned for hearing on February 4, 1980 (5 days) at Bartow, FL is postponed to February 11, 1980 (5 days) at Bartow, FL.

No. 37251, Landmark, Inc. v. Consolidated Rail Corporation, now assigned for hearing on January 30, 1980 (3 days) at Columbus, OH is postponed indefinitely.

JD-29153, American Train Dispatchers v. Union Pacific RR. Co., is canceled and transferred to Modified Procedure.

No. 36434, Commuter Fares Consolidated Rail Corporation, New Jersey and New York, now assigned for hearing February 29, 1980

(3 days) at Cochen, NY, Building No. 1861, Old Courthouse, Main Street.

No. 36474, Benjamin A. Gilman v. Consolidated Rail Corporation, et al, now assigned for hearing on February 28, 1980 (3 days) at Cochen, NY, Building No. 1861, Old Courthouse, Main Street.

MC 100633 (Sub-108F), Overnite Transportation Company, now being assigned for hearing on April 15, 1980 (9 days) at Indianapolis, IN, location of hearing room will be by subsequent notice.

MC-FC-77914 American Tank Transport, Inc., Baltimore, Maryland, Transferee and Secon Service System, Inc., New York, New York, Transferor, now being assigned for Prehearing Conference on February 28, 1980 at the Offices of the Interstate Commerce Commission, Washington, DC.

Agatha L. Mergenevich,  
Secretary.

(FR Doc. 80-2488 Filed 1-24-80; 8:45 am)  
BILLING CODE 7025-01-8

#### [Notice No. 163]

#### Assignment of Hearing; Correction

January 21, 1980

MC 126844 (Sub-70F), R.D.S. Trucking Co., appearing page 74961, December 18, 1980 is corrected as follows:

MC 126844 (Sub-70F), R.D.S. Trucking Co., now being assigned for hearing on January 23, 1980, at the Offices of the Interstate Commerce Commission, Washington, D.C., (instead of continued Prehearing Conference).

Agatha L. Mergenevich,  
Secretary.

(FR Doc. 80-287 Filed 1-24-80; 8:45 am)  
BILLING CODE 7025-01-8

#### [Ex Parte No. 241, Rule 16, 38th Revised Exemption No. 129]

#### Atlanta & Saint Andrews Bay Railway Co., et al; Exemption Under Mandatory Car Service Rules

To all railroads: It appearing, That the railroads named herein own numerous forty-foot plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, ICC-RER 6410-C, issued by W. J.

Trezise, or successive issues thereof, as having mechanical designation "XM," with inside length 44-ft. 6-in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Company

Reporting Marks: ASAB  
Chicago, West Pullman & Southern Railroad Company

Reporting Marks: CWP  
Columbus and Greenville Railway Company

Reporting Marks: CAGY  
Green Mountain Railroad Corporation

Reporting Marks: GMRC  
Illinois Terminal Railroad Company

Reporting Marks: ITC  
Louisville, New Albany & Corydon Railroad Company

Reporting Marks: LNAC  
Missouri-Kansas-Texas Railroad Company

Reporting Marks: MKT  
New Hope and Ivyland Railroad Company

Reporting Marks: NHIR  
North Stratford Railroad Corporation

Reporting Marks: NSRC  
St. Louis Southwestern Railway Company

Reporting Marks: SSW  
Southern Pacific Transportation Company

Reporting Marks: SP  
Southern Railway Company

Reporting Marks: SOU

Effective January 15, 1980, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 14, 1980.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

(FR Doc. 80-2488 Filed 1-24-80; 8:45 am)  
BILLING CODE 7025-01-8

#### [Finance Doctet No. 20065]

#### Consolidated Rail Corp.—Merger—Raritan River Railroad Co.; Exemption

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 January 23, 1980.

FOR FURTHER INFORMATION CONTACT:  
Michael Erenberg, (202)-275-7248.

<sup>1</sup> Addition.

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 FR 42846 (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 an 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, N.J. 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; and (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 the National Transportation Policy**

The transportation policy stated at 49 U.S.C. § 10101 requires us to provide impartial regulations of modes of transportation subject to Subtitle 17. 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 CFR 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 Consolidated 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 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 39 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 January 25, 1980.

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.

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.*

(FR Doc. 80-2500 Filed 1-24-80; 8:45 am)  
BILLING CODE 7036-01-M

#### **Finance, Decision-Notice**

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and