

ENTERED
Office of Proceedings
March 26, 2015
Part of
Public Record

March 26, 2015

JOHN D. HEFFNER
(202) 742-8607
Direct Fax (202) 742-8697
John.Heffner@strasburger.com

BY E-FILING

Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

RE: FD 35873, Norfolk Southern Railway Company-Acquisition and Operation-Certain Rail Lines of the Delaware And Hudson Railway Company, Inc.

Dear Ms. Brown:

I am e-filing the following two documents in the above-captioned proceeding:

(1) on behalf of New York New Jersey Rail, LLC, its Response to the Late-filed Notice of Intent to Participate and related "Application" previously submitted by the East of the Hudson Rail Freight Service Task Force, Inc.

(2) on behalf of Congressman Jerrold Nadler his Late-filed Notice of Intent to Participate and Response to the Late-filed Notice of Intent to Participate and related "Application" previously submitted by the East of the Hudson Rail Freight Service Task Force, Inc.

Copies of these documents have been served by mail on all parties to this proceeding as well as on John McHugh, Esq.

Sincerely yours,

John D. Heffner

Ms. Cynthia T. Brown

March 26, 2015

Page 2

Enclosures

cc: Service list parties
John McHugh, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35873

**Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines
of the Delaware and Hudson Railway Company, Inc.**

Response by New York New Jersey Rail, LLC
to the Late-filed Notice of Intent to Participate and related Application Submitted
by the East of Hudson Rail Freight Service Task Force, Inc.

I.

INTRODUCTION

On December 16, 2014, the Surface Transportation Board (“the Board”) accepted the subject application by Norfolk Southern Railway Company (“NS”) for the acquisition of certain rail lines owned by the Delaware and Hudson Railway Company (“D&H”) and set a procedural schedule for filing of comments, protests, requests for condition, and evidence and argument in opposition and responses thereto. Pursuant to that schedule, New York New Jersey Rail, LLC (“NYNJR”) hereby submits the following in response to the Late-filed Notice of Intent to Participate, dated January 20, 2015, and the related document identified as an “Application” enclosed with such Notice (collectively, the “EOH Notice”), filed by East of Hudson Rail Freight Service Task Force, Inc. (the “EOH Task Force”). The Board should summarily reject the EOH Task Force Notice and “Application” for all of the reasons set forth below.

II.

BACKGROUND

NYNJR is a Class III common carrier short line railroad and a New York limited liability company wholly-owned by The Port Authority of New York and New Jersey (“the Port Authority”).¹ It operates a marine railroad in New York Harbor, conveying freight in railcars from New Jersey to New York, and also from New York to New Jersey, via marine rail barges or carfloats. These carfloats are moved by tugboat from NYNJR’s western terminal at Greenville Yard, Jersey City, New Jersey to 65th Street Yard in Brooklyn, New York, or vice versa. NYNJR has been engaged in several projects to improve the movement of freight across New York Harbor, and enhance the usage of rail to move freight to and from various points in the East of Hudson Region (those areas east of the Hudson River and New York Harbor in the States of New York and Connecticut) since 2008, when the Port Authority acquired NYJNR from its previous, private owners.²

III.

NYNJR’s RESPONSIVE COMMENTS

NYNJR takes no position regarding the merits of Norfolk Southern Railway Company’s acquisition of Delaware & Hudson Railway’s D&H South Lines. Our comments

¹ The Port Authority is a bi-state agency created by Compact between the States of New York and New Jersey and approved by the United States Congress. It is one of the largest transportation agencies in the nation, operating (among other facilities) six interstate bridges and tunnels, three international airports serving the New York/New Jersey metropolitan area, three other airports, two major bus terminals, an interstate commuter rail system, and five major container terminals serving the Port of New York and New Jersey, the nation’s third largest port.

² The Port Authority’s 2008 acquisition of control of NYNJR from its previous owners was outside the Board’s jurisdiction because the Port Authority did not own any other common carrier railroads subject to the Board’s jurisdiction. In 2006 NYNJR’s prior owners acquired the common carrier rights and obligations of the former New York Cross Harbor Railroad pursuant to a corporate family transaction exemption. *See, New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.–Corporate Family Transaction Exemption*, FD 34813 (STB served July 27, 2006).

are limited to the Late Filed Notice of Intent to Participate and the accompanying “Application” filed by the EOH Task Force. The Board should reject these filings for the following reasons: (a) the EOH Task Force’s Notice and “Application” were inexplicably late-filed; (b) the EOH Notice is procedurally defective (it requests relief in the wrong proceeding before the Board); (c) the EOH filing contains numerous serious factual errors and mischaracterizations, especially with respect to the business and operations of NYNJRR; and (d) the EOH Task Force is not an official or semi-official spokesperson for any other party, nor does it have any special status under the *Conrail Decision* (as hereinafter defined).

1. The EOH Notice and “Application” are inexplicably late.

The Board’s December 16, 2014 decision set December 29, 2014, and January 21, 2015, respectively, as the deadlines for filing Notices of Intent to Participate and opposition comments, requests for conditions, and similar matters. The EOH Task Force cited “holidays and internal issues” for its delay in submitting its Notice. While some parties including NYNJRR were unable to meet the December 29, 2014 deadline due to the holidays and sought leave for a late filing, the EOH Task Force waited another 11 days before so doing and without providing any additional explanation. Inasmuch as the Board has decided to consider the subject proceeding as a “minor transaction”, timeliness on the parties of participants is crucial.

2. The EOH Notice is Procedurally Defective.

In general, the EOH Notice asserts that despite the expectations and desires of various interested parties, rail still carries only a small portion of the freight moving into and out of the East of Hudson region. The EOH Notice goes on to suggest that a major

reason for this is the alleged continuing lack of rail-to-rail competition in the East of Hudson region, stemming from the failure of Canadian Pacific Limited ("CPR") to aggressively exercise certain trackage rights awarded to it East of Hudson (from Mechanicville, New York to Fresh Pond Junction, Queens County, New York City) as a result of the STB's decision in *CSX Corp., et al. - Control - Conrail, Inc., Et Al.*, 3 S.T.B. 196 (1998), hereafter cited as the *Conrail Proceeding* or the *Conrail Decision*. The EOH Notice therefore requests that the STB require CPR to transfer such trackage rights to NS and to impose such a requirement as a condition in the instant proceeding.

In fact, it is unclear whether the Board considers D&H a party to this proceeding and, to the extent that it is, D&H is only a party for the sale of the D&H South Lines and the related trackage rights.³ If the EOH Task Force truly believes that rail-to-rail competition East of Hudson is lacking, and if it further believes that such lack of competition is adversely affecting shippers and consumers, and the overall economic vitality of the East of Hudson region, then the proper way to raise such concerns and ask for relief is through the *Conrail Proceeding* dealing with acquisition of Conrail by CSX Transportation ("CSX") and NS. The EOH Task Force should petition the STB to reopen the *Conrail Decision*, should try to prove its case by submission of relevant factual evidence, and should request the imposition of appropriate curative conditions that address the issues raised by it while also respecting the legitimate rights of other interested parties.

Instead, the EOH Task Force has chosen, inappropriately and incorrectly, to raise its concerns and request relief in the instant proceeding --- one which has nothing to do with

³ To the extent that D&H is not a party here, the Board has previously held that it cannot impose conditions on an entity that is not a party to the proceedings. *Boston & Maine Corp. Trackage Rights Over Conrail*, 360 I.C.C. 239 (1979).

rail competition East of Hudson and indeed concerns the sale of certain unrelated rail lines West of the Hudson River by D&H to NS. The request of the EOH Task Force should therefore be summarily rejected as irrelevant.

3. The EOH Notice Contains Numerous Serious Factual Errors and Mischaracterizations.

The EOH Notice is replete with factual errors and unfairly maligns NYNJR by suggesting that the cross-harbor carfloat system is a failure and should be scrapped in favor of routing all rail freight traffic destined for East of Hudson via the Selkirk, New York, gateway and then down the tracks formerly controlled by Conrail, following the eastern shore of the Hudson River into New York City. In point of fact, the cross-harbor carfloat system is growing dramatically, is offering shippers another viable rail option to reach East of Hudson, and is poised for even greater accomplishments as a result of significant federal and local investments. The following is intended to set the record straight and correct some of the more egregious errors in the East of Hudson Notice.

a) The Port Authority acquired NYNJR in 2008, not 2006, and in six short years has increased carfloat traffic from roughly 1,000 revenue cars per year to nearly 4,000 revenue cars (a four-fold increase). The following table reflects that traffic growth:

<u>Calendar Year</u>	<u>Revenue Cars</u>
2009	873
2010	1,229
2011	1,607
2012	1,495
2013	3,041
2014	3,620

This success has been achieved despite inheriting decades-old infrastructure nearing the end of its useful life, and seeing much of that infrastructure destroyed as a result of

Superstorm Sandy in late 2012 (requiring that NYNJR quickly develop contingency plans, and temporary infrastructure, to continue service without prolonged interruption). This is evidence of success, and it flies in the face of the bald assertion that the hope of the carfloat system “creat[ing] a cost/price/service alternative” to the Selkirk, New York, gateway has “not occurred.” In fact, it has already occurred and shows every sign of expanding further.

b) Analysis conducted by a team of nationally recognized transportation consultants retained by the Port Authority suggests that the current carfloat system, with reliable service, could attract as much as 78,000 revenue carloads per year if one were to include intermodal traffic, and roughly 38,000 revenue carloads per year without intermodal traffic. The key is making critical improvements to ensure that the service is timely and reliable. Those improvements are already well in hand, with the help of funding provided by federal and state partners who are interested in a well-run, well-maintained carfloat system acting as a second, “southern” rail gateway into East of Hudson:

- NYNJR has already rehabilitated much of the infrastructure at 65th Street Yard, Brooklyn, including rehabilitation of Tracks 1-5 and Tracks 8 and 9, motorizing both transfer bridges located at that facility, and constructing new lighting, security and fire protection systems.
- NYNJR has purchased and placed into service a more robust and larger carfloat (13-14 railcar capacity) replacing an older unit with less capacity (7-8 railcars).
- NYNJR (i) has already ordered three (3) new ultra-low-emissions locomotives, replacing 50-year old units now on the roster (expected deliveries to begin in the Spring of 2015), (ii) has made certain improvements to the tracks and switches at Greenville Yard and anticipates constructing a new, hydraulically-operated transfer bridge at that facility, and (iii) will shortly be purchasing two (2) even larger carfloats (18 railcar capacity).
- NYNJR is pursuing a total redevelopment of Greenville Yard into a modern, fully integrated multi-modal freight terminal. Improvements will include additional lead tracks, additional working tracks for the carfloat operation, and a new Intermodal

Container Transfer Facility, intended to move more international containerized cargo out of the Port of New York and New Jersey by rail, instead of by truck. All told, the Greenville program is estimated to cost in excess of \$356 Million.

The EOH Notice asserts that NYNJR has allowed the cross-harbor carfloat system to stagnate despite “the availability of \$80 million in public funds” (suggesting that either those funds have been lost or are being misused). Nothing could be further from the truth. As noted above, the carfloat system is certainly not stagnating, and available public funds have already been used, or will shortly be used, to make a series of critical improvements to take the carfloat operation to its next level of growth.

c) In six short years, NYNJR has developed solid working partnerships with NYNJR’s principal rail connections (NS, CSX, and Conrail at Greenville Yard, and the New York & Atlantic Railway (“NYA”) at 65th Street Yard, Brooklyn), and with The City of New York through its Economic Development Corporation (“NYCEDC”), as the owner of the waterfront rail system in Brooklyn, including the 65th Street and 51st Street Yards. This stands in marked contrast to the often contentious and controversial relationships which existed during the period of private ownership of NYNJR and its predecessors. The involved parties have made every effort to reduce barriers, enhance communication, and ensure that hand-offs from one carrier to the next are handled promptly and correctly. The following will illustrate how these parties are working together to make the cross-harbor carfloat system as seamless as possible:

- In 2010, NYNJR and the NYCEDC negotiated and finalized a formal operating agreement, giving NYNJR exclusive rights as rail operator in the 65th Street and 51st Street Yards, as well as the rest of the City-owned Brooklyn waterfront rail system. This agreement has been renewed twice since original execution. In a vote of confidence for the future of the agreement and of the carfloat system, NYCEDC recently spent in excess of \$22 Million renovating and expanding the First Avenue freight line in Brooklyn, including new rail, new switches, and expanded trackage reaching the South Brooklyn Marine Terminal and the receiving yard of the South

Brooklyn Railway (yielding two new significant customers for NYNJR --- Sims Metal Recycling, which ships scrap metal outbound, and South Brooklyn Railway, an affiliate of MTA New York City Transit, which receives inbound locomotives and rail equipment destined for the New York City subway system).

- In 2012, NYNJR and NYA signed their first, formal Interchange Agreement, memorializing how and where traffic would be exchanged between the railroads, and how communications would be made between the railroads to ensure that equipment movements were protected and did not run afoul of Federal Railroad Administration regulations.
- In 2013, NYNJR and Conrail executed new Interline Service Agreements, the first in many years, formalizing interchange of railcars destined for both the carfloat system and NYNJR's separate Port Jersey Division, serving a number of local warehouses. The agreement spells out contacts, communications protocols, and where railcars are dropped off and picked up.

In its Notice, the EOH Task Force makes several attempts to suggest that the cross-harbor carfloat system has not succeeded and can never succeed because of a "balkanized" route and "physical, institutional hurdles associated with freight movements" involving several carriers. Any rail routing involving multiple carriers presents challenges, but these challenges can be overcome if the parties are prepared to work as a team, in furtherance of a shared goal of providing quality service. Contrary to the suggestions made in the EOH Notice, NYNJR and its partners have worked (and continue to work) in this spirit, and the results to date are evidence of that fact.

4. The EOH Task Force Does Not Have Any Special Standing by Virtue of the Conrail Decision.

Finally, it bears emphasis that although the individuals claiming to have legally organized the EOH Task Force as a not-for-profit corporation, and to "own" its name, are free to express their views in the instant proceeding on any matter within the STB's

jurisdiction, they do so solely as individuals, and not as an official or semi-official spokesperson for any other party⁴, or having any special status under the *Conrail Decision*.

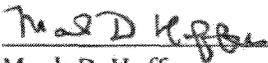
IV.

CONCLUSION

Accordingly NYNJR urges the Board to summarily reject the Notice and “Application” filed by the EOH Task Force for all of the reasons set forth above.

Respectfully submitted for
New York New Jersey Rail, LLC
by: 
Carlene V. McIntyre, Esq.

Arnold Kolikoff, Esq.
Law Department
The Port Authority of New York
& New Jersey
4 World Trade Center
150 Greenwich Street, 25th Floor
New York, NY 10006
(212) 435-3503


Mark D. Hoffer
Director, New Port Initiatives
Port Commerce Department
The Port Authority of New York
& New Jersey
4 World Trade Center
150 Greenwich Street, 17th Floor
New York, NY 10006
(212) 435-7276

Dated: March 26, 2015

⁴ As to the status of the individuals filing as representatives of the EOH Task Force, NYNJR refers the Board to the Late-Filed Notice to Participate filed by Congressman Jerrold Nadler.

JUDICIARY COMMITTEE

SUBCOMMITTEES:

RANKING MEMBER

COURTS, INTELLECTUAL PROPERTY,
AND THE INTERNET

CONSTITUTION AND CIVIL JUSTICE

**TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE**

SUBCOMMITTEES:

HIGHWAYS AND TRANSIT

RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

ASSISTANT WHIP



Congress of the United States

House of Representatives

Washington, DC 20515

JERROLD NADLER

10TH DISTRICT, NEW YORK

REPLY TO:

WASHINGTON OFFICE:
2109 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5635

DISTRICT OFFICE:
201 VARICK STREET
SUITE 869
NEW YORK, NY 10014
(212) 367-7350

DISTRICT OFFICE:
6805 FT. HAMILTON PARKWAY
BROOKLYN, NY 11219
(718) 379-3198

Web: www.nadler.house.gov

March 26, 2015

BY E-FILING

Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**RE: FD 35873, Norfolk Southern Railway Company – Acquisition and Operation –
Certain Rail Lines of the Delaware And Hudson Railway Company, Inc.**

**Late-filed Notice of Intent to Participate by Congressman Jerrold Nadler, and
Response by Congressman Nadler to Late-filed Notice of Intent to Participate and
related Application Submitted by East of Hudson Rail Freight Service Task Force, Inc.**

Dear Ms. Brown:

I am a Member of the United States House of Representatives (the “House”), representing the 10th Congressional District in the State of New York (parts of New York and Kings Counties). I was first elected to this office in a special election in 1992, following 16 years of service as a member of the New York State Assembly. In 2014, I was re-elected to my twelfth full term as a Member of the House. I am currently the highest ranking Northeastern member of the House Transportation and Infrastructure Committee, and have been involved in rail freight issues concerning the areas East of the Hudson River and New York Harbor in the States of New York and Connecticut (“East of Hudson”) for over 20 years.

By decision served on December 16, 2014, the Board directed that parties desiring to participate in this proceeding file their Notice of Intent to Participate on or before December 29, 2014, and to file their comments, if any, on or before January 15, 2015 (the latter deadline was subsequently extended to January +21, 2015). The Board also set March 31, 2015, as the deadline for filing any responsive comments.

I petition for leave to late file my Notice of Intent to Participate. Ordinarily, I would not have expected to participate in this proceeding at all, given that it primarily involves the sale of certain railroad lines West of the Hudson River and having little, if any, impact on rail freight service East of the Hudson River. However, I recently learned of a filing made in

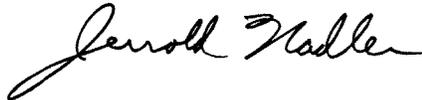
the instant proceeding by the East of Hudson Rail Freight Service Task Force Inc. (the "EOH Task Force") and wish to respond.

I was intimately involved in the creation of the EOH Task Force, which I convened and chaired for over 16 years. I am no longer associated with this group and it does not speak for my office or me. Nonetheless, I feel compelled to submit a response to its filing because it contains numerous factual errors and mischaracterizations, especially with respect to the business and operations of the cross-harbor carfloat system operated by New York New Jersey Rail, LLC ("NYNJR") and, more importantly, because it erroneously suggests that the EOH Task Force is a body which continues to officially represent the interests of the parties (including 24 Members of Congress) who sought its creation in a prior STB proceeding involving the acquisition of control of Conrail Inc. and Consolidated Rail Corporation and is thus an official or semi-official spokesperson for those parties in advocating for greater rail freight competition in the East of Hudson region. It no longer serves in this role, and has no basis to claim that it does. My response to its filing is enclosed herewith.

I will submit any further comments I may have to the Board by its March 31, 2015 deadline. Granting this request will not delay the proceeding or prejudice any party.

Please direct any questions to me on this to matter to my District Director, Robert Gottheim at (212) 367-7350; robert.gottheim@mail.house.gov.

Sincerely,



JERROLD NADLER
Member of Congress

Enc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35873

**Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines
of the Delaware And Hudson Railway Company, Inc.**

Response by New York New Jersey Rail, LLC
to the Late-filed Notice of Intent to Participate and related Application Submitted
by the East of Hudson Rail Freight Service Task Force, Inc.

Respectfully submitted for
New York New Jersey Rail, LLC
by:

Carlene V. McIntyre, Esq.
Arnold Kolikoff, Esq.
Law Department
The Port Authority of New York
& New Jersey
4 World Trade Center
150 Greenwich Street, 25th Floor
New York, NY 10006
(212) 435-3503

Mark D. Hoffer
Director, New Port Initiatives
Port Commerce Department
The Port Authority of New York
& New Jersey
4 World Trade Center
150 Greenwich Street, 17th Floor
New York, NY 10006
(212) 435-7276

Dated: March 26, 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35873

**Norfolk Southern Railway Company - Acquisition and Operation - Certain Rail Lines
of the Delaware And Hudson Railway Company, Inc.**

**Response by Congressman Jerrold Nadler
to Late-filed Notice of Intent to Participate and related Application Submitted
by the East of Hudson Rail Freight Service Task Force, Inc.**

Respectfully submitted,



Jerrold Nadler
Member of Congress
10th Congressional District of New York
United States House of Representatives
2109 Rayburn House Office Building
Washington, DC 20515

(202) 225-5635
(212) 367-7350

Date: March 26, 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35873

**Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines
of the Delaware And Hudson Railway Company, Inc.**

**Response by Congressman Jerrold Nadler
to Late-filed Notice of Intent to Participate and related Application Submitted
by the East of Hudson Rail Freight Service Task Force, Inc.**

I am a Member of the United States House of Representatives (the “House”), representing the 10th Congressional District in the State of New York (parts of New York and Kings Counties). I was elected to this office in a special election in 1992, following 16 years of service as a member of the New York State Assembly. In 2014, I was re-elected to my twelfth full term as a Member of the House. I am currently the highest ranking Northeastern member of the House Transportation and Infrastructure Committee, and have been involved in rail freight issues concerning the areas East of the Hudson River and New York Harbor in the States of New York and Connecticut (“East of Hudson”) for over 20 years.

I recently learned of a Late-filed Notice of Intent to Participate, dated January 20, 2015, and a related document entitled “Application” enclosed with such Notice (collectively, the “EOH Notice”), submitted by East of Hudson Rail Freight Service Task Force, Inc. (the “EOH Task Force”). I was intimately involved in the creation of the EOH

Task Force, which I convened and chaired for over 16 years. I am no longer associated with this group and it does not speak for my office or me.

Pursuant to a decision issued December 16, 2014, the Board set January 15, 2015 (subsequently extended until January 21, 2015), as the deadline for interested parties to file comments, requests for conditions, and other pleadings in this proceeding. It also set March 31, 2015, as the deadline for any responsive comments. My purpose in submitting these comments is to respond to the EOH Notice. I shall not address the merits of Norfolk Southern Railway's proposal to acquire a rail line from the Delaware & Hudson Railway as that transaction is outside of my Congressional district.

I feel compelled to submit a response to the EOH Notice because it contains numerous factual errors and mischaracterizations, especially with respect to the business and operations of the cross-harbor carfloat system operated by New York New Jersey Rail, LLC ("NYNJRR") and, more importantly, because it erroneously suggests that the EOH Task Force is a body which continues to officially represent the interests of the parties (including 24 Members of Congress) who sought its creation in a prior STB proceeding involving the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (the "Conrail Decision") and is thus an official or semi-official spokesperson for those parties in advocating for greater rail freight competition in the East of Hudson region. It no longer serves in this role, and has no basis to claim that it does.

1. The EOH Notice Contains Numerous Factual Errors and Mischaracterizations.

The EOH Notice is replete with factual errors and unfairly maligns the work of New York New Jersey Rail, LLC ("NYNJRR"), a Class III common carrier short line railroad which is

wholly owned by the Port Authority of New York and New Jersey (the "Port Authority"), in seeking to improve, revitalize and expand the cross-harbor carfloat system operated by NYNJR, which moves freight in loaded railcars from New Jersey to New York, and vice versa, via marine rail barge or carfloat.

I am completely supportive of the work done by NYNJR to improve its cross-harbor carfloat system, and I feel the record, especially over the past 2-3 years, has been one of unquestionable success.¹ Traffic is up dramatically, a wide range of commodities are being carried (including fruit, vegetables, rice, beer, lumber, piping, building products, biodiesel fuel, and scrap metal, among others), public interest in the carfloat system is greater than ever before, and dramatic physical improvements are underway including new locomotives, larger carfloats, and a new transfer bridge at Greenville Yard. Finally, on a related note, the work of the Port Authority and NYNJR has helped to focus public attention on several regional issues of critical importance for the future: How do we do a better job of moving goods into, through and out of East of Hudson? Can we develop options that depart from our almost total reliance at present on heavy trucking, with all of its attendant problems associated with traffic congestion, infrastructure wear and tear, and diesel exhaust emissions? Can we make better use of neglected waterborne and rail transportation assets? Finally, what will happen if we choose to do nothing? Can we remain competitive in a changing world economy, and can we provide for the region's needs even as population expands over the next few decades? The work done to improve NYNJR's cross harbor carfloat system --- making use of the region's water and rail assets,

¹ See the points made in Section III(3) of the Response to the EOH Notice submitted by NYNJR, which I agree with and endorse.

learning how shippers can be induced to try different modes of transportation, and building coalitions with public and private sector partners --- has pointed out several possible ways forward, and has opened our eyes to think about these issues in a new and more critical way.²

It is entirely wrong and false to suggest, as the EOH Task Force does in its filing, that the cross-harbor carfloat system is a failure in promoting rail competition East of Hudson, that it has no chance of ever succeeding as a rail gateway into that region, or that investments made to improve its operations are wasted. To the contrary, the steady growth shown in traffic over the past several years, the potential for even more dramatic growth in the future, and the fact that NYNJR is working more cooperatively than ever with project partners to advance the prospects of the carfloat system as a second rail gateway into East of Hudson all suggest that things are pointed in the right direction, and refute the charge that public sector investments in the carfloat system NYNJR are misguided. As the primary sponsor of a Congressional earmark which set aside \$100 Million in federal transportation funds to improve the carfloat system, I can say without reservation that the federal investment in the carfloat system was, and remains, a sound one, and one that will

² Building on the experience of NYNJR in operating and improving the carfloat system, and on detailed research conducted by a nationally-recognized consulting team on how, where, and why freight moves into East of Hudson, the Port Authority, together with the Federal Highway Administration, has just released a comprehensive and well thought-out study document --- the Cross Harbor Freight Program Tier I Draft Environmental Impact Statement --- analyzing critical choices we must make in deciding how to improve the movement of goods into, through, and out of the East of Hudson region, in order to remain competitive in the world economy and preserve the quality of life enjoyed by millions of residents and visitors each day. See Port Authority of New York and New Jersey/Federal Highway Administration, Cross Harbor Freight Program: Tier 1 Draft Environmental Impact Statement, November 2014, appearing at http://www.panynj.gov/port/CHFP_draft_Tier_1_EIS/CHFP_Tier1_EIS_downloads.html

generate substantial environmental and financial dividends for the region in the decades to come .

2. The EOH Task Force Does Not Officially Represent the Parties Who Sought Its Creation, Nor Does It Have Any Special Standing by Virtue of the Conrail Decision.

The EOH Notice is correct when it states that the EOH Task Force grew out of the efforts of a twenty-four (24) member Congressional Delegation, led by me (the “Congressional Delegation”), to ensure that any sale of Conrail by the federal government did not result in diminished rail competition in the East of Hudson region.

The EOH Notice is incorrect, however, when it suggests that the EOH Task Force either continues to represent the Congressional Delegation, or to act as an official or semi-official spokesperson for the parties who sought its creation in advocating for rail freight and rail competition East of Hudson.

Although I convened and chaired the EOH Task Force from inception through June of 2014, I have since withdrawn and disassociated myself from it and it no longer represents me, or to my knowledge any other member of the Congressional Delegation which sought its creation.

Together with the Port Authority and the New York City Economic Development Corporation, I am in the process of organizing and convening a new East of Hudson rail freight working group to focus on issues of concern to elected officials, rail carriers, shippers and consumers East of Hudson, which will support existing efforts to improve and expand NYNJR's carfloat system, as well as seeking authorization, funding and

implementation of other projects to improve rail freight service to, and increase rail competition in, East of Hudson.

Finally, although the individuals claiming to have legally organized the EOH Task Force as a not-for-profit corporation, and to “own” its name, are free to express their views in the instant proceeding on any matter within the STB’s jurisdiction, they do so solely as individuals, and not as an official or semi-official spokesperson for any other party, or having any special status under the Conrail Decision.

Respectfully submitted,

A handwritten signature in black ink that reads "Jerrold Nadler". The signature is written in a cursive, flowing style.

Jerrold Nadler
Member of Congress
10th Congressional District of New York
United States House of Representatives
2109 Rayburn House Office Building
Washington, DC 20515

(202) 225-5635
(212) 367-7350

Dated: March 26, 2015.

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certifies that I transmitted a copy of the foregoing (1) Response by New York New Jersey Rail LLC to the Late-filed Notice of Intent to participate and Related Application submitted by the East of Hudson Rail Freight Service Task Force, Inc. and (2) Late-filed Notice of Intent to Participate by Congressman Jerrold Nadler, and Response by Congressman Nadler to Late-filed Notice of Intent to the following parties by first class United States Mail and electronic mail this 27th day of March, 2015:

Jeffrey A. Bartos
Guerrieri, Clayman, Bartos & Parcelli, P.C.
1900 M Street, N.W., Suite 700
Washington, DC 20036

David Bernhardt
Main Department of Transportation
16 State House Station
Augusta, ME 04333

Eugene H. Blabey
Western New York & Pennsylvania
Railroad, LLC
3146 Constitution Ave
Olean, NY 14760

Honorable Robert P. Casey, Jr.
United States Senate
Washington, DC 20510

P. Scott Conti
75 Hammond Street
Worcester, MA 01610

Frank Depaola
Ten Park Plaza, Suite 4160
Boston, MA 02116

Richard S. Edelman
O'Donnell, Schwartz and Anderson, P.C.
1300 L Street, N.W., Suite 1200
Washington, DC 20005

Steven M. Golich
Celtic International
7840 Graphics Drive, Suite 100
Tinley Park, IL 60477

Eric M. Hocky
Clark Hill, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103

Peter R. Leishman
Milford-Bennington Railroad Co., Inc.
62 Elm Street
Milford, NH 03055

Gordon P. MacDougall
1025 Connecticut Avenue, NW
Suite 919
Washington, DC 20036-5444

Keith D. Martin
New York State Department of
Transportation
50 Wolf Road, 6th Floor
Albany, NY 12232

Terrence D. Matthews
JB Hunt Transport Services, Inc.
130
Lowell, AR 72745-0130

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South Lasalle St., Suite 1890
Chicago, IL 60604

Wayne A. Michel
Reading Blue Mountain and Northern
Railroad Company
P.O. Box 218
Port Clinton, PA 19549

Raj Mukherji
PO Box 1
Jersey City, NJ 07303

William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Ave. NW, Suite 300
Washington, DC 20037

Sam Niness
Thoroughbred Direct Intermodal Service, Inc.
5165 Campus Drive, Suite 400
Plymouth Meeting, PA 19462

Mike Radak
Hanjin Shipping America, L.L.C.
80 Route 4 East
Paramus, NJ 07652-4600

Joe Shefchik
PTI Logistics LLC
2701 Executive Dr.
Green Bay, WI 54304

Gary Strausbaugh
Perdue Inc.
P O Box 1537
Salisbury, MD 21801

Vincent P Szeligo
Wick Streiff Meyer O'Boyle & Szeligo PC
1450 Two Chatham Center
Pittsburgh, PA 15219-3427

John B Vermylen
Zerega (A. Zerega Sons, Inc.)
241
Fair Lawn, NJ 07410

/s/ John D. Heffner
John D. Heffner

Dated: March 27, 2015