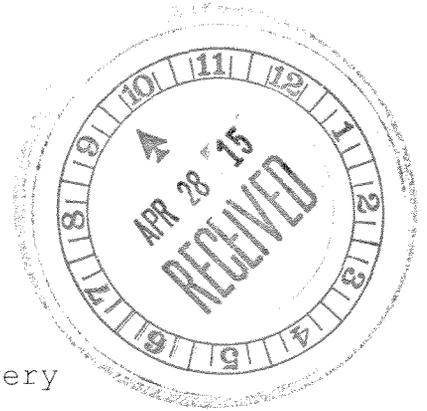


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ENTERED
Office of Proceedings
April 28, 2015
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Public Record

CHARLES H. MONTANGE
ATTORNEY AT LAW
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SEATTLE, WASHINGTON 98177

 (206) 546-1936
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25 April 2015

By Federal Express, expedited delivery

Memo to Hon. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: Consolidated Rail Corp. - Abandonment Exemption - in Hudson
County, AB 167-1189X

A handwritten signature in black ink, appearing to be 'C. Montange'.

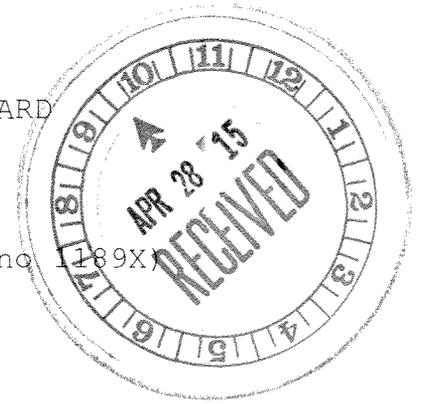
From: Charles Montange, counsel for City of Jersey City, et al

In the absence of e-filing availability so far this weekend, enclosed please find the original and ten copies of a Comment on behalf of City of Jersey City for filing in this proceeding. Thank you for your assistance in this matter.

Encl. original plus ten

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no 1489X)
in Hudson County, NJ)



Comment
of
City of Jersey City
On Submission by CNJ to
Intervener LLCs' "Motion for Determination that Documents Filed
with Board
as 'Confidential' and 'Highly Confidential' Should Be Sealed"
and Conrail Letter dated April 10, 2015

212 Marin Boulevard, LLC, et al. ("LLCs") seek to breach the protective order in this proceeding in order to use a confidential shipper statement to litigate in their latest state court case (212 Marin Blvd LLC et al v. City of Jersey City, HUD-L-4954-14) whether it is arbitrary and capricious for City of Jersey City to seek to file an "Offer of Financial Assistance" ("OFA") in the above-captioned abandonment proceeding pending before this agency. City, et al have already replied in opposition to breaching the protective order for this purpose. City et al supplement their reply with the attached letter (Exhibit A) from City's New Jersey counsel (John Curley) to the LLCs' counsel (Daniel Horgan) showing that the entire state lawsuit is frivolous, that the "arbitrary and capricious" claim is preempted by federal law under New Jersey decisions,

and that the entire state court case should be withdrawn. Since the state proceeding is frivolous, the LLCs' stated reason for breach of the protective order in order to litigate more in state court lacks merit.

In a letter dated April 10, 2015, which Consolidated Rail Corporation ("Conrail") filed with this Board, Conrail says it has refuted "any lawful basis" for the City to obtain valuation information. To the contrary, this Board's order of May 26, 2009 (Exhibit B), requires Conrail to supply valuation information as required by 49 C.F.R. 1152.27 before City has to make any OFA, much less a showing to justify an OFA.¹

The City, Rails to Trails Conservancy and PRR Harsimus Stem Embankment Preservation Coalition ("City et al) have also sought discovery about the intentions (fraud) of Conrail and complicity of the LLCs in connection with the illegal sale of eight blocks

¹ City timely appealed the requirement to make any showings of shipper need, feasibility or public support, on the ground that these showings under STB precedent were not required unless City was filing an OFA to defeat a public project, which it is not. The Board has not yet addressed City's appeal.

Conrail's other claims in its April 10 letter are nonsense. One of the traditional uses of the Harsimus Branch was transload. Without waiver of City's objections to any requirement for further showings, there is ample evidence of shipper demand as well as feasibility under this Board's precedent. City again requests Conrail to supply the valuation information for all the tax parcels the City has identified as well as the Embankment parcels. City seeks an effective means to preserve the Harsimus Branch, and the OFA remedy if applied will preserve the Branch consistent with historic preservation and other public purposes, including rail transportation.

of the Harsimus Branch (including the Embankment) to a developer (the LLCs) in 2005. The LLCs and Conrail have stonewalled any discovery, forcing City et al to file motions to compel. This information is potentially germane to relief sought by City et al under sections 106 and 110(k) of the National Historic Preservation Act, 16 U.S.C. 470f (protection of the National Register-eligible Embankment) and 470h-2(k) (intentional anticipatory demolition of the Embankment via a fraudulent de facto abandonment). This Board has stated that conduct such as that engaged by Conrail and the LLCs is "unlawful."

Consummation of Rail Line Abandonments that Are Subject to Historic Preservation and Other Environmental Conditions, Ex Part No. 678, served April 23, 2008. The unlawful conduct of Conrail and the LLCs, compounded by their flip-flopping of positions on this agency's jurisdiction,² deluge of state court litigation (including threats to "bankrupt" perceived opponents), heal-dragging on legitimate discovery requests, and Conrail's refusal to supply valuation information notwithstanding a Board order to do so, amount to an attack on

² After stipulating to this agency's jurisdiction in Special Court (d/b/a U.S.D.C. for D.C.) and sustaining a summary judgment in favor of City et al on the issue, the LLCs attacked STB's processes yet again in 212 Marin Boulevard LLC - Pet. Dec. Order, F.D. 35825. After losing (again), they sought reconsideration, losing (again) in a decision served April 24, 2015.

the integrity of this Board's processes spanning more than a decade.

City et al have been injured by the unlawful conduct of Conrail in 2005 and by the attack on the integrity of this Board's processes from at least 2005 to date. City et al are entitled to effective relief. Accord, Consummation, slip at 4. The Board has clear power to void the deeds from Conrail to the LLCs on a variety of theories. Indeed, now that the Harsimus is clearly under this Board's authority, the deeds are void pursuant to N.J.S.A. 48:12-125.1.

The issue before the Board should not be the LLCs' effort to facilitate more state court litigation to further burden City et al's effort to seek relief before this agency, but instead should be how to provide effective and meaningful relief for City et al from the illegal abandonment that the LLCs themselves state was based on fraudulent misrepresentations by Conrail. In the end, the Board needs to protect its processes from the kind of unlawful conduct and burdensome litigation strategies witnessed in this and related proceedings since 2005.

Respectfully submitted,



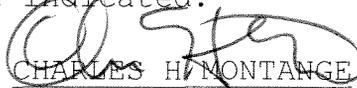
Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739

Counsel for City of Jersey City, Rails to Trails
Conservancy, PRR Harsimus Stem Embankment
Preservation Coalition

Att. A: Letter, Mr. Curley to Mr. Horgan, dated 15 April 2015
B: Decision served May 26, 2009

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 25th day of April 2015 addressed to the parties or their representatives per the service list below, unless otherwise indicated.


CHARLES H. MONTANGE

Service List

[AB 167 (Sub-no. 1189X)]

- with address corrections as of August 2014 -

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April 15, 2015

VIA FACSIMILE and CERTIFIED MAIL R.R.R.

Daniel E. Horgan, Esq.
Waters, McPherson, McNeill, PC
300 Lighting Way
P.O. Box 1560
Secaucus, New Jersey 07096

Re: 212 Marin Boulevard, L.L.C., et al. v. City of Jersey City
Docket No. HUD-L-4954-14
Our File No. 319.1208

Dear Mr. Horgan:

I represent the City of Jersey City ("City") in connection with the above matter. Please be advised that this letter constitutes a frivolous litigation notice and demand pursuant to R. 1:4-8.

It is the position of the City that the Complaint, in Lieu of Prerogative Writs, filed in this matter on behalf of the plaintiffs is a frivolous pleading in violation of R. 1:4-8 and your signature thereon subjects you personally to sanctions. As discussed in significant detail below, the basis for this position is that the relief sought by the Plaintiffs cannot be granted as each of the seven enumerated Counts and corresponding Sub-Counts of the Complaint lack the requisite evidential basis to support the claims for relief and/or are not supported by existing law or a non-frivolous extension of law.

Count 1 – OPMA Violations

As you are aware, Count 1 of the Complaint contains five Sub-Counts addressing various alleged violations of the Open Public Meetings Act (OPMA). With respect to Sub-Count (a), the Plaintiffs' contention that the notice for the September 8, 2014, Special Meeting violated N.J.S.A. 10:4-8 is completely without merit. Contrary to Plaintiffs' allegation that the City was required to provide a "description of the particular facet of the 'Sixth Street Embankment litigation'" being discussed, (Pl.s' Compl. ¶ 68), in properly exercising its discretion to hold a closed session,

pursuant to N.J.S.A. 10:4-12(b)(7), the City was only required to give in its notice a description of the agenda “to the extent known.” McGovern v. Rutgers, 211 N.J. 94, 111 (2012); see also, Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO, Local 2364 v. Trenton State College Bd. of Trustees, 284 N.J. Super. 108, 113 (Law Div. 1995) (“public bodies, must tread a fine line--informing the public about its executive-session activities while not compromising the privacy interests of those whose business is being discussed”). Accordingly, the City’s notice, which specified that discussions regarding the Sixth Street Embankment litigation would be conducted, was fully compliant with the OPMA.

With respect to Sub-Count (b), Plaintiffs’ allegation that the City Council took formal action during the closed session lacks any evidential basis whatsoever. Plaintiffs’ own Complaint confirms that Ordinance 14.103 was properly introduced for a first reading on September 10, 2014, and then voted on after a second reading and public comment on September 23, 2014. Further, Plaintiffs’ allegation that informal agreements “to vote to introduce and adopt Ordinance 14.103” were in violation of the OPMA is contrary to precedent, which explicitly establishes that a governing body may formulate plans of action or take informal straw polls during closed sessions. Burnett v. Gloucester County Bd. of Chosen Freeholders, 09 N.J. Super. 219, 238 (App. Div. 2009) (“The intent of the statute [N.J.S.A. 10:4-12(b)] is to allow officials to meet privately with counselors and advisors in order to discuss policy, *formulate plans of action* and generally to have an exchange of ideas.”) (emphasis added); Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 369 N.J. Super. 175, 187 (App. Div. 2004) (holding that “the straw vote taken at the executive session did not” exceed the bounds of the permissible closed session).

With respect to Sub-Count (c), Plaintiffs’ allegation that Resolution 14.459 lacked sufficient detail because it did not specifically reference Ordinance 14.103 or the OFA is without any basis in law. N.J.S.A. 10:4-13 simply requires the resolution authorizing a closed meeting to state “the general nature of the subject to be discussed” during that closed meeting. New Jersey case law has expressly provided that the level of detail that the Plaintiffs demand is simply not required by N.J.S.A. 10:4-13. McGovern v. Rutgers, 211 N.J. at 111; Local 2364 v. Trenton State College Bd., 284 N.J. Super. at 114 (“good practice would dictate that resolutions be as specific as possible, e.g., the ‘general nature of the subject to be discussed’ should not be set forth as ‘litigation’ but, rather, as ‘litigation-A vs. B.’” (quoting 34 New Jersey Practice, Local Government Law § 141, at 174 (Michael A. Pane) (2d ed. 1993)). As indicated in Local 2364 v.

Trenton State College Bd., a simple identification of the specific litigation being discussed is sufficient. Id. at 114.

With respect to Sub-Count (d), Plaintiffs' allegation that discussion of the OFA and Ordinance 14.103 exceeded the scope of the litigation lacks support in law. As set forth in Houman v. Pompton Lakes, 155 N.J. Super. 129, 145 (Law Div. 1977):

The term "litigation" has a broad significance in common usage. It is defined thus: "Act or process of litigating, a suit at law; a judicial contest; also figuratively, (a) dispute; discussion." The word "litigation" in 38 C.J.S. 68 is defined: "A contest in a court of justice, for the purpose of enforcing a right; a judicial contest, a judicial controversy; a suit of law."

(internal citations omitted.) To invoke the attorney-client privilege exception of N.J.S.A. 10:4-12(b)(7), "the public body must be discussing its strategy in the litigation, the position it will take, the strengths and weaknesses of that position with respect to the litigation, possible settlements of the litigation or some other facet of the litigation itself." 155 N.J. Super. at 145; see also, O'Boyle v. Borough of Longport, 218 N.J. 168, 194 (2014) (holding that, in the context of a joint defense, attorney-client privilege extends to communications that are "legal, factual, or strategic in character.") It is undeniable that the OFA is directly related to the underlying litigation, as it is a remedy that can only be pursued in the pending STB hearing. Further, any resolution by the City to pursue an OFA would be completely worthless outside of the context of the STB proceeding.

With respect to Sub-Count (e), Plaintiffs' claim that the City violated the OPMA by not promptly furnishing minutes for the closed session lacks any evidential support, as the allegations of the Complaint specifically state that minutes and a redacted transcript of the full proceedings were provided to Plaintiffs. As set forth in Payton v. N.J. Tpk. Auth., 148 N.J. 524 (1997), N.J.S.A. 10:4-14's requirement for prompt production of minutes must yield when doing so "would subvert the purpose of the particular exception" under N.J.S.A. 10:4-12(b). Id. at 556-557. Plaintiffs are not entitled to learn the full details of the discussions held during the closed special meeting, as such disclosure would completely eviscerate the attorney-client privilege that N.J.S.A. 10:4-12(b)(7) was established to preserve.

Count 2 – Violations of N.J.S.A. 40:9C-1

Plaintiffs' allegations that Ordinance 14.103 violates N.J.S.A. 40:9C-1's requirement for NJDOT approval of the OFA lacks any evidential basis. N.J.S.A. 40:9C-1 relates only to a

municipality's subsidization of a rail line within its jurisdiction. Further, the NJDOT approval requirement only relates to *agreements* entered into between the municipality and the rail line. Additionally, the last sentence of this statute specifically states that the municipality may appropriate and raise funds in the regular manner.¹

Because Ordinance 14.103 is only the authorization to file an OFA for the *purchase* of the Sixth Street Embankment properties, no agreement has been reached, let alone an agreement to *subsidize* a rail operator. Accordingly N.J.S.A. 40:9C-1 and its requirement for NJDOT approval is inapplicable to Ordinance 14.103 and Plaintiffs' claims under this statute are frivolous.

Count 3 – Violations of the Local Bond Law

In Count 3 of the Complaint, Plaintiffs allege that Ordinance 14.103 violates the Local Bond Law (LBL), specifically N.J.S.A. 40A:2-39, because the financing for the OFA, which Plaintiffs claim is for the purpose of acquisition and maintenance of freight lines on the Sixth Street Embankment, is contrary to the purposes for which the Bond Funds were raised.

However, Plaintiffs' position is untenable because, contrary to the allegations in the Complaint, Ordinance 14.103 specifically states that the OFA will be filed to “acquire title to the [Embankment properties] for purposes of continued freight rail *and other compatible public purposes including passenger rail, open space, trail and historic preservation.*” As such purposes are consistent with the original authorization for the Bond Funds for the “acquisition by the City of real property and the improvements thereon known as the Harsimus Embankment Park and Greenway Project,” the City is fully within the bounds of the LBL in appropriating the Bond Funds for those compatible purposes. Accordingly, Count 3 of the Complaint is frivolous and must be withdrawn.

Count 4 – Violations of the Local Lands and Building Law

Plaintiffs allegations under Count 4 of the Complaint are contingent on a violation of N.J.S.A. 40:9C-1. As set forth above, Ordinance 14.103 does not implicate N.J.S.A. 40:9C-1, so the claims brought under Count 4 are frivolous.

¹ It should also be noted that N.J.S.A. 40A:9-2.1 and -2.2 permit a municipality to acquire rail lines, acquire their appurtenant lands and structures, and lease all or a portion of those properties to common carriers.

Count 5 – Violations of the Local Fiscal Affairs Law

In Count 5 Plaintiffs’ essentially claim that for the same reason that Ordinance 14.103 violates the Local Bond Law, the City’s CFO impermissibly authorized the use of Bond Funds. As the viability of this count is contingent on the viability of Count 3, for the reasons set forth above, Count 5 of the Complaint is frivolous and must be withdrawn.

Count 6 – Violations of the Local Public Contracts Law

In Count 6 of the Complaint, the Plaintiffs allege that Ordinance 14.103 violates the Local Public Contracts Law (LPCL). The basis of this claim is that the Ordinance “impermissibly authorizes contracts for services related to the reestablishment of rail service to be sought out and awarded by the Business Administrator and/or Corporation Counsel in violation of the LPCL.” (Pl.s’ Compl. ¶ 126.)

However, nowhere in Ordinance 14.103 is authorization given for the Business Administrator and/or Corporation Counsel to award contracts. In fact the only authority given to the Business Administrator and/or Corporation Counsel is to “solicit proposals” for the necessary contracts. Accordingly, Ordinance 14.103 does not purport to authorize any activity that is not in compliance with the LPCL. Thus, Plaintiffs’ claims under Count 6 are frivolous as they lack any basis in law.

Count 7 – Ordinance 14.103 is Arbitrary and Capricious

In Count 7 of the Complaint, Plaintiffs’ allege that Ordinance 14.103 is arbitrary and capricious because it violates the laws enumerated in the previous Counts of the Complaint and that its purpose is to file a “sham” OFA so that the City can acquire property for a park, rather than for Ordinance 14.103’s stated purpose of resumed freight rail services.

As set forth above, Plaintiffs’ claims that Ordinance 14.103 runs afoul of the various statutes referenced in the Complaint are frivolous. Regarding the contention that Ordinance 14.103 is a “sham” OFA, municipal action under the police power “is subject to constitutional limitations that it not be unreasonable, arbitrary or capricious, and that means selected via such legislation shall *have real and substantial relation to the objects sought to be attained.*” Trombetta v. Mayor & Comm’rs of Atlantic City, 181 N.J. Super. 203, 226 (Law Div. 1981) (emphasis added). However, Plaintiffs’ attempt for judicial intervention in Superior Court lacks any basis in law. The OFA is a remedy exclusive to the STB abandonment proceeding and as such, determination of whether the City’s OFA is a feasible, non-pretextual, plan to re-establish freight rail services, as

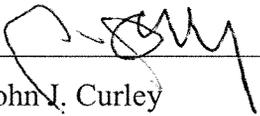
well as providing for commuter rail and open space, along the Harismus Embankment is within the exclusive jurisdiction of the STB. See, Ridgefield Park v. New York Susquehanna & W. Ry. Corp., 163 N.J. 446, 455-56 (2000).

It is for the aforementioned reasons that each and every count of the Complaint is fatally defective, rendering the entirety of the Complaint frivolous pursuant to R. 1:4-8.

Accordingly, the City demands that the Complaint, in Lieu of Prerogative Writs, be voluntarily dismissed with prejudice. Should the Complaint not be voluntarily dismissed with prejudice, within twenty-eight days from the service of this letter, the Plaintiffs are hereby notified that upon the Court's dismissal of the Complaint, the City shall make an application for sanctions, including attorneys' fees, costs and other litigation expenses as appropriate, as provided by R. 1:4-8(b).

Thank you for your consideration in this matter.

Very truly yours,



John J. Curley

cc: Jeremy Farrell, Esq., Corporation Counsel
Charles Montange, Esq.

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SERVICE DATE – LATE RELEASE MAY 26, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1189X)

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

STB Docket No. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Decided: May 26, 2009

This decision directs Consolidated Rail Corporation (Conrail) to provide the information necessary to formulate an offer of financial assistance (OFA), as specified in 49 CFR 1152.27(a), and grants the request of the City of Jersey City (City) and CNJ Rail Corporation (CNJ) to toll the due date to submit an OFA.

Conrail, CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS) (collectively, applicants) jointly filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NS to discontinue service over, an approximately 1.36-mile portion of a line of railroad known as the Harsimus Branch, between milepost 0.00, CP Waldo, and milepost 1.36, a point east of Washington Street, in Jersey City, Hudson County, NJ.¹ The notice of the exemption was served and published in the Federal Register on March 18, 2009 (74 FR 11631-32).

¹ In City of Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and New Jersey State Assemblyman Louis M. Manzo—Petition for Declaratory Order, STB Finance Docket No. 34818 (STB served Aug. 9, 2007), the Board described the line as follows: extending between milepost 1.3 near Luis Munoz Marin Boulevard (formerly Henderson Avenue) and milepost 2.54 near Waldo Avenue, in Jersey City, NJ.

The exemption was scheduled to become effective April 17, 2009, unless stayed by the Board. On March 27, 2009, City and CNJ each filed a formal expression of intent to file an OFA to purchase the line. City and CNJ requested Conrail to provide the information required by 49 CFR 1152.27(a) and certain additional information relating to Conrail's present, prior, or future use of the line, including all valuation maps for the line, and if not depicted on the valuation maps, a listing of all deed references showing Conrail's legal interests in the line. CNJ also requested that the time period for it to submit an OFA be tolled, until 10 days after it received the data requested from Conrail.² On April 1, 2009, Conrail filed a reply to the notices of intent to file an OFA, requesting that the Board reject City and CNJ's notices of intent. On April 22, 2009, City replied to Conrail's April 1 filing.

By decision served on April 6, 2009 (April 6 Decision), the Board granted a request of the Embankment Preservation Coalition and extended the deadline for filing petitions to reopen, requests for trail use and public use conditions, and responses to the Environmental Assessment until May 7, 2009. By decision served on April 16, 2009 (April 16 Decision), the effective date of the exemption was stayed until the environmental review process is complete.

The stay of this proceeding during the environmental phase should not delay the exchange of information requested by City and CNJ under the OFA procedures. Conrail is directed to provide City and CNJ with the information specified in 49 CFR 1152.27(a).³ The due date for City and CNJ to submit an OFA will be tolled until 10 days after Conrail provides the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so. Once the stay is lifted, the effective date of the exemption will be determined.⁴

The OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic.⁵ Any person who intends to file an OFA in this proceeding should address one or more

² On April 7, 2009, City filed a motion joining in CNJ's request to toll the time for submitting an OFA.

³ City and CNJ are reminded that, under the Board's OFA procedures, a potential offeror is entitled only to the information specified in 49 CFR 1152.27(a).

⁴ If City and CNJ submit OFAs, Conrail's April 1 filing and City's related filings will be considered together when the stay is lifted.

⁵ See, e.g., Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA, STB Docket No. AB-33 (Sub-No. 265X) (STB served May 7, 2008); Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X (STB served May 21, 1999), aff'd sub nom. Kulmer v. STB, 236 F.3d 1255, 1256-58 (continued...)

of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible. See Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—in Los Angeles County, CA, STB Docket No. AB-409 (Sub-No. 5X), slip op. at 2-3 (STB served June 16, 2008) (requiring this showing where traffic had not moved over the line in 2 years and carrier sought exemption from OFA procedures).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The time period for City and CNJ to file an OFA is tolled until 10 days after Conrail provides City and CNJ with the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so.
2. The effective date of the exemption will be determined when the stay is lifted by the Board.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary

(...continued)
(10th Cir. 2001); The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in King County, WA, STB Docket No. AB-6 (Sub-No. 380X) (STB served Aug. 5, 1998).