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SERVICE DATE – NOVEMBER 23, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-596

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION — ADVERSE  
ABANDONMENT — NEW YORK CROSS HARBOR RAILROAD  
IN BROOKLYN, NY

Decided: November 17, 2004

In New York Cross Harbor R.R. v. STB, 374 F.3d 1177 (D.C. Cir. 2004), the court vacated the Board's decision in this proceeding served on May 12, 2003 (May 2003 decision), and remanded the case to the Board. In the May 2003 decision, the Board had granted the application of New York City Economic Development Corporation (NYCEDC), filed on behalf of the City of New York (the City), for adverse abandonment of the tracks and facilities at the Bush Terminal Yards (a/k/a "First Avenue Yards") and the 51st Street floatbridge and related tracks at the Harborside Industrial Center (a/k/a "Brooklyn Army Terminal") (jointly the tracks and facilities), in Brooklyn, Kings County, NY.<sup>1</sup> New York Cross Harbor Railroad (NYCH) operates an active car float service from the tracks and facilities at issue here to its Greenville terminal in Jersey City, NJ, where the cars are transferred to Norfolk Southern Railway Company.

As of the last filing in this proceeding, there were seven active shippers using the tracks and facilities. The City sought adverse abandonment authority to eliminate NYCH's rail operations from property it owns, thereby allowing it to use the property for some other purpose. The court noted in its decision that in the past the Board had denied adverse abandonment requests where the rail line had traffic (or a potential for future traffic). In this case, although local traffic on the tracks and facilities used by the NYCH has fallen off in recent years, about 160 carloads of local traffic per year remain, and the shippers actively opposed the adverse abandonment application. Based on these facts, the court found that the Board had departed from its precedent without sufficient analysis and explanation.

In light of the court's decision, we will require NYCEDC to show cause why the Board should not deny NYCEDC's application for adverse abandonment and dismiss this proceeding. NYCEDC has 15 days from the service date of this decision to respond to this show cause order, and to serve a copy of its response on NYCH, as well as the shippers on the line.

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<sup>1</sup> By decision served on August 28, 2004, the Board denied reconsideration, although it stayed the grant of authority pending judicial review.

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

It is ordered:

1. Within 15 days of the service date of this decision, NYCEDC is directed to show cause why its December 4, 2001 application for adverse abandonment should not be denied and the proceeding dismissed. NYCEDC must serve a copy of its response to the Board on NYCH and the shippers on the line. NYCH and the shippers on the line may respond within 10 days of their receipt of NYCEDC's response to the Board.

2. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams  
Secretary