

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB 167 (SUB-NO. 1189X)

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

**REPLY OF CONSOLIDATED RAIL CORPORATION TO
“MOTION TO COMPEL CONSOLIDATED RAIL CORPORATION
IMMEDIATELY TO SUPPLY VALUATION INFORMATION REQUIRED
PURSUANT TO 49 C.F.R. 1152.27(a)”**

Consolidated Rail Corporation (“Conrail”) hereby replies to the Motion to Compel (“Motion” or “Mot.”) filed by the City of Jersey City (“City”) on December 23, 2014. The Motion concerns valuation information that the City says it needs to make an offer of financial assistance (“OFA”) pursuant to 49 C.F.R. § 1152.27(a).

The Board has repeatedly stressed that a bona fide OFA must be based on a genuine need for freight rail service. *See, e.g., Roaring Fork R.R. Holding Auth.—Abandonment Exemption—In Garfield, Eagle, & Pitkin Counties, CO*, 4 S.T.B. 116, 119 (1999) (“The OFA process is designed for the purpose of continuing to provide freight rail service, and is not to be used to obstruct other legitimate processes of law (whether Federal, state, or local) when continuation of such service is not likely.”), *aff’d sub nom. Kulmer v. STB*, 236 F.3d 1255 (10th Cir. 2001). The City disputes that it has any obligation to show a genuine need for freight rail service in order to pursue an OFA, and it has appealed the guidance offered in this regard by the Director of the Office of Proceedings in the Board’s decision served in this proceeding on May 26, 2009.

Notwithstanding that appeal, the City alleges that it has identified a shipper that wants freight rail service over the Harsimus Branch, and that it needs Conrail’s valuation of its holdings

in order to prepare an OFA. There is something very peculiar, however, about the “freight service” the City says it wants to provide. Even assuming that the City had a genuine commitment to such service (which it does not), and even assuming that such service were operationally as well as economically feasible (which it is not), the freight service the City says it wants to provide would not involve the Embankment properties that are at the heart of this proceeding.

What the City says it wants to provide is a “transload” operation, with trucks moving through City streets between the shipper’s facility and the transload facility. That transload facility would necessarily have to be at grade somewhere between CP Waldo on the west and the beginning of the Embankments at Brunswick Street, because neither trucks nor trains can get to the top of the Embankments. The only way trains ever got to the top of the Embankments was via elevated tracks on a trestle supported by massive concrete piers that still exist at intervals between CP Waldo and Brunswick Street. There has never been any track at grade between CP Waldo and Brunswick Street providing rail service to anyone, and it is a mystery how the City thinks a transload facility could be located or operate there.

Even assuming that an OFA for an at-grade transload facility on Conrail property west of Brunswick Street were lawful and feasible, such an OFA would not involve the Embankment parcels that are the real target of the City’s interest. If a transload facility were feasible, the Harsimus Branch could be abandoned over the Embankment parcels without any impact on the transload “freight service” the City says it wants to provide under an OFA. The City has not offered any suggestion, much less any evidence, that anyone has an interest ever in providing freight service on top of the Embankments.

The City does say in its Motion that “[t]he City has expressed interest in possible commuter rail use of the Branch.” Mot. at 17. But even if this were more than a twinkle in the City’s eye, commuter rail use of the Branch is not freight use of the Branch. The City can only use the extraordinary remedy of an OFA for continued freight rail purposes, not for park, or trail, or commuter rail purposes. *See Borough of Columbia v. STB*, 342 F.3d 222, 226 (3d Cir. 2003) (“When a carrier has applied to abandon a rail line, ‘any person’ may file an OFA, which is an offer to purchase or subsidize a rail line and *so to facilitate continued freight rail service.*”) (emphasis added). Of course, the City has condemnation authority which it can apply for whatever public purposes New Jersey law and federal law permit once the STB grants abandonment authority. But the City cannot bootstrap an OFA for transload freight service over an at-grade portion of Conrail property west of Brunswick Street into an OFA for elevated Embankment blocks that have nothing to do with the freight service proposed.

Presumably, if the City cannot snare the Embankment parcels as part of its OFA gambit, it does not have any interest in an OFA at all. Certainly, the ordinance passed by the City concerning the OFA expresses no interest in obtaining property west of Brunswick Street just for purposes of burdening this dense urban community with a heavy industrial rail and truck transload operation. Accordingly, Conrail requests that the Board reject the City’s Motion altogether.

Alternatively, if the Board believes that the City may have an interest in proceeding with an OFA just for a transload operation west of Brunswick Street, to respond to a valuation request Conrail would require considerably more information about how its property rights have any bearing on such a proposed operation. As noted earlier, Conrail’s property west of Brunswick Street was never used for at-grade rail service. Even assuming an OFA could now lawfully be

used to appropriate Conrail's property for an at-grade transload facility, Conrail could not respond to a valuation request without knowing what property the City believes it would need for a transload operation, what the layout would be, and how and where it would connect to the rest of the rail system.

Respectfully submitted,

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January 12, 2015

CERTIFICATE OF SERVICE

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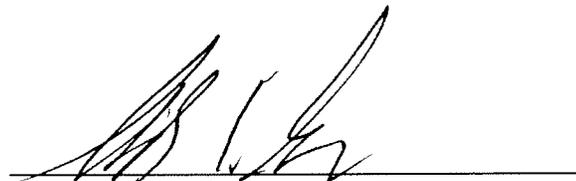
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