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

Re: Consolidated Rail Corporation - Abandonment
Exemption - in Hudson County, NJ, AB 167-1189X
and related dockets

Reply to LLCs' Nov. 17 letter motion to compel

Dear Ms. Brown:

This is in response to the Letter dated November 17, 2015, from 212 Marin Boulevard LLC et al (the "LLCs"), which seems to suggest that the City of Jersey City ("City") has defaulted in supplying a redacted public shipper statement and seeks relief against the City requiring it to file a public unredacted statement. There are several fatal flaws with the LLCs' letter motion to compel, but the main one from the point of view of the City is that the City is no longer under an obligation to supply a redacted public shipper statement, or any further version of the statement in question. The LLCs' letter motion as to the City thus has no merit and must be denied.

Background. The LLCs are a group of commonly owned LLCs to whom Consolidated Rail Corporation ("Conrail") in 2005 purported illegally to sell key portions of the Harsimus Branch, a line of railroad, for ripping out the historic Harsimus Embankment in favor of townhouses and/or skyscrapers. The sale not only violated STB abandonment licensing requirements (e.g., 49 U.S.C. 10903) but also foreclosed meaningful compliance with section 106 of the National Historic Preservation Act, 16 U.S.C. 470f. The unauthorized and unlawful action by Conrail also violated state law. E.g., N.J.S.A. 48:12-125.1.

Since 2005, the LLCs, joined from time to time by Conrail, have engaged in a maelstrom of litigation in local, state, and federal tribunals to frustrate the efforts of the City of Jersey City to preserve the Harsimus Branch for a variety of mutually compatible public purposes (e.g., rail, trail, open space), all of which if implemented by the City would be consistent not only with preservation of the historic Harsimus Embankment but also with minimization of adverse impacts on adjacent national historic districts and other section 106-protected assets.

For many years, Conrail and the LLCs sought to evade STB jurisdiction completely; now they seek to render it a meaningless pro forma exercise by depriving City and allied parties with any meaningful relief before this agency. To this end, the LLCs pursue litigation against the City, its officials, and sometimes allied entities and/or their attorneys in state courts with the intent of disempowering the City to seek federal relief.

Argument. The LLCs' November 17 letter is predicated on the assumption that the City has failed to comply with this Board's order served November 10, 2015, but that order clarifies that CNJ Rail Corporation, not the City, must prepare confidential and redacted public versions of a verified shipper statement it prepared and furnished to the City. Under the November 10 order, the City is not responsible for preparing anything. In any event, as City previously indicated, CNJ originally designated the entire statement highly confidential; under the applicable protective order, the City merely so treated it. The City itself is not asserting confidential or highly confidential treatment for any portion of the shipper statement. The LLCs thus have no basis for their motion to compel against the City; that motion insofar as it claims the City is responsible is in bad faith.

The November 17 letter is inherently a distraction from the issues in this proceeding. City originally filed the shipper statement against which the November 17 letter is directed almost a year ago (i.e., on December 23, 2014) in support of a motion to compel Conrail to furnish valuation information required by this Board's regulations in light of the timely notices of intent to OFA filed by City and CNJ in 2009. This Board granted the motion to compel, but in effect vacated any deadline for filing an OFA. The primary reasons for the shipper

statement (to force recalcitrant Conrail to supply the valuation information and to expedite the OFA proceeding) are thus moot. In particular, Conrail claims to have supplied the information required by the Board, and the Board has held the OFA proceeding in abeyance.

The LLCs, whose lawyers already possess the statement in full, utterly fail to show how the shipper statement, even if made public in unredacted form (which they now again demand) will provide any benefit to them. Moreover, the statement insofar as predictive is now dated, inasmuch as the shipper is now actively in business. City, if allowed, continues to wish to file an OFA and currently intends to rely on more timely information assembled by consultants, to the extent yet-to-be-issued scheduling orders and other time constraints permit.

The LLCs among other things are attempting to defeat this agency's jurisdiction via state court proceedings, and City is concerned that they may intend to harass the shipper by suing them, or invoking discovery against them, in state proceedings to that end. The manager of the LLCs has threatened to bankrupt opponents of his efforts to demolish the Embankment, including their lawyers, and he in fact has caused the undersigned to be sued in that connection, in addition of course to the City, several of its officers or attorneys, Rails to Trails Conservancy, its general counsel, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition. In a very real sense, the LLCs seek to foreclose not only meaningful section 106 analysis in this proceeding, but also any meaningful federal remedy, including OFA, that would preserve the Harsimus Branch from demolition, and townhouses or skyscrapers. In order to prevent harassment of this shipper, City believes that its identity should continue to be treated as confidential under the OFA, but that matter is up to CNJ and this Board.

Conclusion

The LLCs are entitled to no relief as to the shipper statement against the City. Their unfounded November 17 sniping at the City is part and parcel of their pattern of distracting and vexatious litigation.

Respectfully submitted,



Charles H. Montange
Counsel for City of Jersey City, Pennsylvania
Railroad Harsimus Stem Embankment Preservation
Coalition, and Rails to Trails Conservancy

cc. Service list per attached certificate

Certificate of Service

I certify service of the foregoing by USPS, postage pre-paid first class, on the entities or individuals in the attached list at the addresses also listed, on the foregoing date. I also certify that I furnished same by email attachment to counsel for Conrail and the LLCs, and to the representative of CNJ.



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(addresses as of July 23, 2015)

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