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Hon. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street. S.W., Room 100
Washington, D.C. 20423

Re: Consolidated Rail Corporation - Aban. Exemp.-in
in Hudson County, NJ, AB 167 (Sub-no. 1189X),
placed in abeyance by this Board by a decision
served April 20, 2010

Dear Ms. Brown:

Attorney Daniel Horgan filed a letter dated July 18, 2014, presumably for his clients 212 Marin Boulevard, LLC, et al (LLC's),¹ asking that the above-captioned proceeding (which the LLCs have sought to maintain in abeyance) be dismissed if the City Council of the City of Jersey City does not act in some fashion on a "petition" he made to the City Council opposed to the City's seeking to file an "offer of financial assistance" ("OFA") before this Board.

The City Council of Jersey City is under no known statutory obligation to respond to Mr. Horgan's or his clients' petition, and no response has been promised. In any event, the petition involves a matter in litigation, concerning which the City Council takes legal advice. Accordingly, if the City Council further considers the petition, that consideration can be expected to be in closed session. Despite Mr. Horgan's "petition" to the Council not to file an OFA, Mr. Horgan also claims in his letter that the City does not intend to file an OFA. This would render the "petition" to the City Council moot, one would suppose, as well as his letter motion to this Board. Although Mr. Horgan from time to time tries to control the City's legal position, he in fact represents interests adverse

¹ His letter does not identify a client.

to the City (and its non-profit allies) on matters relating to the Harsimus Branch, and his assertions about the City and its intent are not reliable in this context. The City desires to file an OFA, if this Board permits and as the law provides, for that remedy is the most cost effective and efficient means to provide relief to the City for the illegal de facto abandonment of the Harsimus Branch in which Conrail and the LLCs engaged. It also will remedy the violation by Conrail and the LLCs of various applicable environmental and historic preservation statutes. It is also supported by City's co-litigants, Rails to Trails Conservancy (RTC) and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition) for if allowed it will preserve this historic property for continued rail and other compatible public purposes.

The LLCs' unceasing efforts to avoid an abandonment proceeding, marked now by a motion to dismiss Conrail's dormant abandonment proceeding, seem contrary to their own interests. The LLCs now admit the property was conveyed to Conrail as a line of railroad and the LLCs clearly want it for non-rail use. Under 49 U.S.C. 10501(b) and 10903, this requires an STB abandonment authorization. The LLCs cannot lawfully implement their non-rail intent until and unless the Harsimus Branch is lawfully abandoned.

But the LLCs are clearly frightened they will lose title pursuant to the OFA statute, or pursuant to other STB or state law post-abandonment remedies, as indeed they should, if there is an abandonment proceeding. This is the reason the LLCs are doing their utmost to evade and to delay this Board's abandonment jurisdiction. To this end, instead of complying with the law, the LLCs and Conrail have sought through continued litigation to drive to silence City et al, and to obtain huge profits for acting illegally and without requisite abandonment authority. Indeed, the LLCs and Conrail entered into one or more agreements to pursue litigation against City, RTC and Coalition (the LLCs also sued City et al's attorneys) rather than comply with the law. They have now lost, recanted, or otherwise disavowed the central basis of their litigation (their claim that the property was not conveyed as a line of railroad to Conrail), and yet they continue to seek to evade, to delay, and to obfuscate.

This proceeding is currently in abeyance. It was placed in abeyance while Conrail and the LLCs litigated their spurious

claim that the property was not conveyed to Conrail as a line of railroad. Because the proceeding has been in abeyance, Conrail has declined to respond even to modest discovery requests. The LLCs have asked for continued abeyance pending action on a petition they filed with this agency to continue to evade this abandonment proceeding. The LLCs' motion to dismiss is clearly not timely under the logic of either Conrail or the LLCs.

City, RTC and Coalition reserve the right to respond further if the LLCs renew their motion after the abeyance order is dissolved. Failure to respond or to respond further to any specific claim or argument by the LLCs in the July 18 letter, or by the LLCs or Conrail elsewhere, should not be deemed an admission, but simply a wish to facilitate lifting the order holding this proceeding in abeyance.

City, RTC and Coalition seek meaningful and effective relief from the unlawful abandonment and sale of the Harsimus Branch for non-rail purposes without any abandonment authorization, as well as relief from the attendant violations of environmental and historic preservation law. The Harsimus Branch was and is clearly a line of railroad subject by law to this agency's abandonment jurisdiction.

By my signature below I certify service by US Mail, postage pre-paid, first class or equivalent, on the parties per the attached Service List on the date above.

Respectfully submitted,



Charles H. Montange

for City of Jersey City,

Rails to Trails Conservancy
and Pennsylvania Railroad Harsimus
Stem Embankment Preservation
Coalition

Att.

cc. Service List

Service List

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

- with address corrections as of Jan 2014 -

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