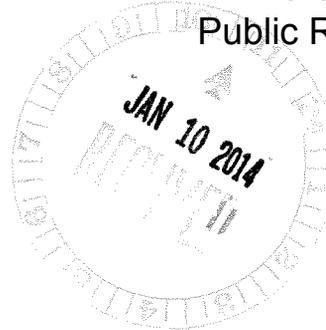


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Cynthia T. Brown
Chief, Section Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW, Room #100
Washington, D.C. 20423-0001

Re: Consolidated Rail Corp - Abandonment Exemption - in
Hudson County, NJ, AB 167 (Sub-no. 1189X)

Dear Ms. Brown:

This letter is directed at the letter filed by Consolidated Rail Corporation (Conrail) dated January 3, 2014, which replies to the Reply to Petition to Intervene filed by City of Jersey City (City), Rails to Trails Conservancy (RTC), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition). The Conrail letter should be stricken as a reply to a reply, which of course is not permitted under STB rules. 49 C.F.R. 1104.13(c).

The only information Conrail supplies as justification for its reply to a reply is that it wishes to fault City, RTC and Coalition for failing to excuse Conrail from fraudulent misrepresentation on the grounds that "Conrail has shown that the STB also was aware of all the facts allegedly supporting the fraud claims." This does not provide any cause for Conrail's reply, because, among other things, Conrail's basic premise that it disclosed relevant matters to this agency is easily shown to be false. In particular, Conrail never informed this agency it was illegally abandoning the Harsimus Branch without prior STB authorization. When City, RTC and Coalition formally brought Conrail's illegal actions to the agency's attention in January 2006 by initiating a declaratory proceeding docketed as F.D. 34818, Conrail persisted in misrepresenting (exactly as we understand 212 Marin Boulevard LLC et al to allege) to the

agency that the Harsimus Branch was a "spur" exempt from STB abandonment authority. See STB Dec. in F.D. 34818, served August 9, 2006, slip at 9-10 (discussing Conrail position and rejecting it on multiple grounds). Conrail continued to misrepresent the line as a spur in the United States Court of Appeals (see Conrail opening brief in D.C. Cir. 07-1401 at esp. pp. 27-29). And Conrail continued to do so in the United States District Court for the District of Columbia, and in the D.C. Circuit when the case went up a second time. See Final Jt. Brief of Appellees Conrail et al in D.C.Cir. No. 10-7135, esp. at p. 16, filed August 26, 2011. Conrail only ceased misrepresenting the regulatory status of the property when its chosen developer (212 Marin Boulevard, LLC, et al) stipulated that the property was conveyed to Conrail as a line of railroad subject to STB abandonment jurisdiction. See City et al Notice filed Nov. 22, 2013, in AB 167 (Sub-no. 1189X), Exhibit B (stipulation filed July 10, 2012). At that point, Conrail stipulated it would no longer contest the issue by raising any arguments or facts to the contrary. Conrail needs to stop misrepresenting matters, especially now that it has in effect stipulated it finally will stop misrepresenting the status of the line.

In its impermissible reply, Conrail reiterates its desire to delay this abandonment proceeding, alluding to reasons it has previously supplied. One of the reasons Conrail has supplied is that it believes there have been numerous developments over the past years and it desires clarity on "plans" and "positions" of various parties. There have been no developments that obviate the need for this agency to afford City, RTC and Coalition relief, and the plans and positions of Conrail and its chosen developer remain adverse (indeed, have become more adverse) to the interests of the City, RTC and the Coalition. Conrail also seeks delay because its chosen developer has appealed to the D.C. Circuit the summary judgment entered that the Harsimus Branch is regulated by the STB (as provided by the Joint Stipulation). No stay was sought of the summary judgment, nor is there any that is automatic. The only purpose served by further delay is to expose City, RTC and Coalition to further litigation expenses in federal and state courts in lawsuits instigated and perpetuated by Conrail's chosen developer (212 Marin Boulevard, LLC, et al) while the relief they have sought since 2006 is postponed indefinitely. The manager of Conrail's chosen developer has acknowledged that he has advised us that he

intends to bankrupt us via this kind of strategy. He has sued the undersigned personally, as well as the General Counsel of RTC, to prevent them from representing their clients. Conrail is merely facilitating him, even as (or because) its chosen developer seeks to sue Conrail for fraud. Conrail should rectify its illegal actions, not compound them in the hope, still, that the railroad's chosen developer will exhaust the will or resources of the City, RTC and Coalition before this agency affords meaningful relief. Conrail's fear of enhancing damage claims by the developer against the railroad for fraud, or Conrail's hope that the developer's antics will force the City into capitulation, so far obviously trumps any sentiment at Conrail to comply with the law. This is contrary to 49 U.S.C. 10101(2) (expeditious and fair proceedings), 10101(9) (honest and efficient management of railroads), and 10101(15) (expeditious handling of proceedings).

In addition to consuming agency and judicial resources, the victim of Conrail's misrepresentations to STB and the courts concerning the nature of the Harsimus Branch has been and remains the City, RTC, and Coalition. The victim is also public use and preservation of the Harsimus Embankment, which as part of a line of railroad should have been protected under, inter alia, the National Historic Preservation Act (NHPA) before any abandonment of the Harsimus Branch. The railroad and the developer have sought, and continue to seek, destruction, not preservation, of the Embankment, and to this end their tactics are to avoid NHPA and similar protective statutes.

The developer has indicated that Conrail has entered into a contract binding itself to take all necessary steps to allow the developer, in effect, to destroy the Embankment. Notice, supra, Ex. C, para 136. A copy of that contract should be made available to the City, RTC, and Coalition, and this agency, forthwith, for it appears to be written documentation of a conspiracy against this agency's jurisdiction, in order to reap the benefits of an illegal abandonment and what the developer now acknowledges was a program of fraudulent and negligent misrepresentations to the City, STB and the courts. We can fathom no rationale for Conrail's seeking to delay this proceeding other than its continued adherence to that illicit conspiracy. Conrail's misrepresentations are germane to this proceeding until and unless Conrail fully rectifies its illegal actions; to date the railroad instead has vigorously insisted upon preserving and perpetuating the extremely prejudicial (to

City, RTC, Coalition and the public) results of its unlawful abandonment and misrepresentations.

By my signature below, I certify service of this letter by deposit in the US Mail, first class or equivalent pre-paid, addressed as per the attached revised service list (which includes updated addresses and omits addressees for which no forwarding information is thus far available) on this date.

Respectfully submitted,

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