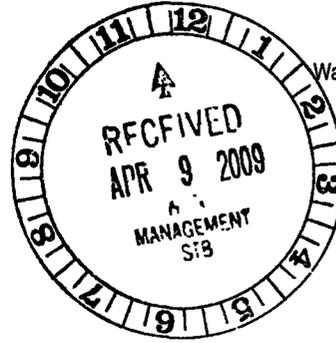


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April 9, 2009

BY HAND DELIVERY

Anne K. Quinlan
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Docket No. AB 167 (Sub-No. 1189X)
Consolidated Rail Corporation—Abandonment
Exemption -- in Hudson County, New Jersey

22846

Docket No. AB 55 (Sub-No. 686X)
CSX Transportation, Inc. —Discontinuance
Exemption—in Hudson County, New Jersey

Docket No. AB 290 (Sub-No. 306X)
Norfolk Southern Railway Company—
Discontinuance Exemption—in Hudson
County, New Jersey

Dear Secretary Quinlan:

Enclosed for filing with the Board are the original and ten copies of Consolidated Rail Corporation's Reply in Opposition to the City of Jersey City's "Motion to Toll Time Period for Submitting OFA and Motion for 7-Day Extension of Time to Reply to Conrail Motion to Reject." Please date-stamp the enclosed extra copy and return it to our representative.

Sincerely yours,

Robert M. Jenkins III

RMJ/bs

Enclosures

ENTERED
Office of Proceedings

APR - 9 2009

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NEW JERSEY**

STB NO. AB 55 (SUB-NO. 686X)

**CSX TRANSPORTATION, INC.—DISCONTINUANCE EXEMPTION—IN HUDSON
COUNTY, NEW JERSEY**

STB NO AB 290 (SUB-NO. 306X)

**NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE
EXEMPTION—IN HUDSON COUNTY, NEW JERSEY**

NOTICES OF EXEMPTION

**REPLY IN OPPOSITION TO THE CITY OF JERSEY CITY'S "MOTION TO TOLL
TIME PERIOD FOR SUBMITTING OFA AND MOTION FOR 7-DAY EXTENSION OF
TIME TO REPLY TO CONRAIL MOTION TO REJECT"**

Consolidated Rail Corporation ("Conrail") hereby replies to the Motions filed by City of Jersey City ("City") on April 6, 2009, "to toll time period for submitting OFA" and "for 7-day extension of time to reply to Conrail motion to reject" ("City Motions"). The City Motions should be denied.

ARGUMENT

On March 27, 2009, the City and CNJ Rail Corporation ("CNJ") filed Notices of Intent to File an Offer of Financial Assistance in the above-captioned proceedings. On April 1, 2009, Conrail filed a Reply to those Notices ("Conrail Reply").

In its Reply, Conrail first analyzed the applicable law, showing that the OFA process is designed to provide for continuing freight rail service to shippers on the line that a petitioning carrier seeks to abandon. Conrail Reply at 1, 7. The Board need not initiate the OFA process if the Board finds either (1) that the OFA proponent has no genuine interest in providing freight rail service or (2) that there is no realistic likelihood of such traffic over the line to be abandoned. See, e.g., *Union Pacific Railroad Co.—Abandonment and Discontinuance of Trackage Rights Exemption—In Los Angeles County, CA*, STB Docket No. AB-33 (Sub-No. 265X), 2008 WL1968728 (STB served May 7, 2008) (“*Los Angeles County*”).

Second, Conrail demonstrated that neither the City nor CNJ has any genuine interest in providing freight rail service and, even if they did, there is no realistic likelihood that freight rail service can be provided on the line at issue (the “Harsimus Branch”). Conrail Reply at 7-10. There are no shippers on the line, and there have been none for almost two decades. Further, there is no freight rail infrastructure on the line, and the cost of providing it would be exorbitant. There is no prospect of developing sufficient freight rail business to justify such an investment.¹ The City relentlessly campaigned and long ago succeeded in ridding the area around the Harsimus Branch of every vestige of or capacity to provide freight rail service. Conrail Reply at 3-4, 7-8.

Why then would the City file an OFA request? Its only motive is delay and harassment. Conrail Reply at 9-10. And the City’s April 6 Motions simply confirm that conclusion. The City’s Motion to Toll (City Motion at 4) asks the Board to delay the entire abandonment process pending Conrail’s production of burdensome and immaterial operating and appraisal information

¹ There is also no prospect that CNJ—a non-operating company that, according to the New Jersey State Business Gateway Service, has been “DISSOLVED WITHOUT ASSETS”—will be able to establish the requisite financial responsibility. Conrail Reply at 8-9.

that does not have the slightest prospect of showing that there is any realistic opportunity to provide freight rail service on the Harsimus Branch or that the investments needed to restore the line could possibly be justified. There is already a wealth of information in the record in *City of Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and New Jersey State Assemblyman Louis M. Manzo—Pet. for Dec. Order*, STB Finance Docket No. 34818 (STB served Aug. 9, 2007) (“*City of Jersey City*”) to demonstrate that fact. Thus, as we have noted several times, the Harsimus Branch has neither shippers nor any rail infrastructure; much of the property already is under commercial development and cannot be used for freight transportation; and Conrail no longer owns substantial portions of the line. Consequently, none of the information sought by the City and CNJ could conceivably support an OFA for the line. The only explanation for the City’s request for information and its motion to toll the proceedings for ten days following receipt of the information is that the City wants to drag out this exempt abandonment proceeding, and subject Conrail to pointless disclosure burdens.

That the City has no genuine interest in actually providing freight service on the Harsimus Branch also is clear from the record both in Docket No. 34818 and the above-captioned proceedings. The record in those proceedings is replete with allegations of environmental and historic preservation concerns, but that record reflects no desire on the part of the City or any of the other commenters to resurrect freight rail service. To the contrary, in its August 9, 2007 decision in STB Finance Docket No. 34818, the Board noted that the petitioners in that proceeding—which included the City—“explain *that they do not intend to reactivate rail service over the Embankment.*” *City of Jersey City*, slip op. at 7 (emphasis added). The City’s about-face on this issue should be viewed for what it is: a procedural gambit designed to prolong

the proceedings and harass Conrail. The Board has made clear that it is not required to ignore the obvious, and allow a pointless OFA process to burden and delay a legitimate abandonment exemption process. *Los Angeles County*, 2008 WL 1968728 (STB served May 7, 2008).

Accordingly, the City's Motion to Toll should be rejected.

The City's Motion for Extension of Time not only seeks delay, but it is premised on a misrepresentation of Conrail's Reply. The City characterizes Conrail's Reply as a request for the Board "to exempt this proceeding from OFA procedures" (City Motions at 2). Conrail did not seek an "exemption" from the OFA process. Such exemptions "have been granted . . . when the record shows that a right-of-way is needed for a valid public purpose and there is no overriding need for continued rail service." *Norfolk Southern Railway Co.—Abandonment Exemption—in Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-293X), 2007 WL 3277033, at *5 (STB served Nov. 6, 2007).

Conrail did not predicate its request to reject the City's and CNJ's OFA notices on the ground that the Harsimus Branch is needed for a public purpose. (As discussed in Conrail's Reply, almost all of the Harsimus Branch has been sold to private developers, and much of it is already occupied by private high-end retail, residential, and hotel projects. Conrail Reply at 3-5.) Instead, Conrail has requested that the Board reject the OFA notices on the merits: the Board should refuse to impose an OFA on this proceeding because there is no prospect that either the City or CNJ can meet the requirements for a successful OFA. Such a determination is wholly warranted here because the OFA notices submitted by the City and CNJ are mere shams designed to delay the exemption process and harass Conrail.

Moreover, there was nothing improper in seeking the rejection of OFA notices by means of a reply. In *Los Angeles County*, 2008 WL 1968728 (STB served May 7, 2008), Union Pacific

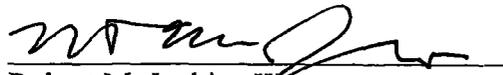
Railroad submitted a “Verified Reply” seeking the very same relief as Conrail seeks here—namely, the rejection of a notice of intent to file an OFA and the denial of a motion to toll the time for submitting an OFA. The Board agreed with Union Pacific’s position that there was no realistic prospect of freight service, rejected the notice of intent to file an OFA, and denied the motion to toll the date for filing an OFA as moot. In so doing, the Board did not question the propriety of Union Pacific’s submission.²

The basic premise of Conrail’s Reply is that the City’s and CNJ’s OFA notices are entirely devoid of merit. The City and CNJ are transparently attempting to use the OFA process to prolong the proceedings. The Board has a strong interest in preventing abusive OFA filings from undermining the legitimate abandonment exemption process, in protecting its administrative resources from being wasted on the review of meritless OFA applications, and in protecting carriers in STB proceedings from harassing and pointless discovery. Nothing in the City’s Motions provides any ground to question Conrail’s arguments in this regard. For the foregoing reasons, the City’s Motions should be rejected and the City’s and CNJ’s OFA Notices should be denied.

Respectfully submitted,

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² Moreover, the Board did not treat Union Pacific’s submission as a “*de facto* motion” to which a reply would be due in twenty days. Only fourteen days elapsed between the dates of Union Pacific’s Verified Reply (April 23, 2008) and the Board’s decision (May 7, 2008) in *Los Angeles County*. Thus, there is no basis for the City to characterize Conrail’s Reply as improper or for the City’s argument that it is entitled to at least twenty days to respond to Conrail’s Reply—much less a 7-day extension of that period.



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Dated: April 9, 2009

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2009, I caused a copy of the foregoing Reply in Opposition to the City of Jersey City's "Motion to Toll Time Period for Submitting OFA and Motion for 7-Day Extension of Time to Reply to Conrail Motion to Reject" to be served by first class mail (except where otherwise indicated) on those appearing on the attached Service List.


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