

**JOHN K. ENRIGHT, Associate General Counsel**1717 Arch Street, Philadelphia, PA 19103  
Phone 215-209-5012 - Fax 215-209-4819  
john.enright@conrail.com

February 11, 2009

*Via UPS Overnight Delivery*Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20024Re Docket No AB 167 (Sub No 1190X)  
Consolidated Rail Corporation  
Lehigh Valley Main Line (the "Line")  
Abandonment Exemption  
In Hudson County, NJENTERED  
Office of Proceedings  
FEB 12 2009  
Part of  
Public Record

Dear Secretary Quinlan

This letter is in response to the letter submitted on February 9, 2009 by CNJ Rail Corporation (CNJ) requesting that the Board take no action in this proceeding until CNJ files a motion to compel Conrail to produce certain additional information. For the reasons set forth herein, said request should be denied.

CNJ claims in its letter that Conrail has not fully complied with all the provisions of 49 CFR 1152.27(a)(1)(ii). This assertion simply seems to be an effort by CNJ to buy more time for it to consider whether or not to file an OFA. As is evident from the following history, Conrail has been fully responsive to CNJ and, accordingly, the time for filing an OFA is now past.

The information that CNJ claims has not been forthcoming from Conrail relates to segments of the Line that Conrail does not own or otherwise does not have the ability to convey to CNJ.<sup>1</sup> Accordingly, providing a Minimum Purchase Price for those segments makes no sense since Conrail could not consummate a sale even if the price were acceptable. The first such segment is a small piece of property at Communipaw Avenue. In the consultation letters attached to its abandonment filing, Conrail identified this small

<sup>1</sup> As noted in its letter of February 5, 2009, Conrail did provide a Minimum Purchase Price to CNJ and the pertinent valuation maps for the one segment it still owns, cautioning CNJ that said segment is intended to be conveyed shortly to a third party as part of a court ordered settlement agreement.

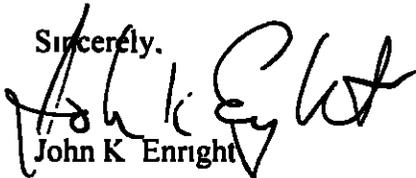
Anne K Quinlan  
February 11, 2009  
Page 2

parcel as still currently owned by it. However, subsequent to the filing, Conrail received correspondence from New Jersey Transit ("NJT") (Exhibit "A" attached) indicating that it was said agency's belief that this parcel was already owned by NJT. After further investigation, Conrail believes that this parcel was intended to be conveyed to NJT as part of a previous larger real estate transaction and is in the process of correcting that oversight. More importantly, in phone conversations between Eric Strohmeier, Vice President of CNJ, and the undersigned, Mr. Strohmeier expressed an interest only in the Chapel Avenue to Linden Avenue parcel so it was only this segment for which Conrail provided valuation maps and a Minimum Purchase Price.

Mr. Strohmeier also makes reference to a meeting on January 28, 2009 where Conrail's outside counsel commented that there might be a constructive or an implied rail easement in the segments previously conveyed by Conrail to third parties<sup>2</sup>. The question of whether such a constructive or implied easement could be utilized to reinstitute rail service on such segments would have to be initially addressed to the current property owners, not Conrail. The feasibility of utilizing a constructive or implied easement depends on any number of factors, including the property's current use and condition. Conrail is not privy to any of this information nor would it make sense for Conrail to investigate such matters since it has no idea how CNJ would propose to utilize such property for rail purposes, if at all. Again, in discussions with CNJ, it has only indicated an interest in the segment still owned by Conrail.

The subject NOE was filed over two months ago. There is no reason why CNJ, if it intends to file an OFA, could not have filed it within the time frame required under the regulations. Those regulations are strictly construed. *See, e.g., Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's W 30th St Secondary Track in New York, NY—In the Matter of an Offer of Financial Assistance*, Docket No. AB-167 (Sub-No. 1094), 1993 WL 274727, \*3 (served July 22, 1993) (OFA deadlines "designed to ensure that railroads would be able to dispose of their property expeditiously and by a date certain"). Conrail has provided CNJ with all the relevant information at Conrail's disposal. If CNJ needs other information, not in Conrail's possession, in order to make an offer, then it should have obtained such information in accordance within the prescribed deadline. Conrail believes that the deadline was February 2, 2009. Accordingly, Conrail respectfully requests that CNJ's request to stay this proceeding be denied.

Sincerely,



John K. Enright

cc Eric Strohmeier  
Bob Ryan, Director of Real Estate

---

<sup>2</sup> Conrail did not reserve an express rail easement in its deeds conveying these segments.

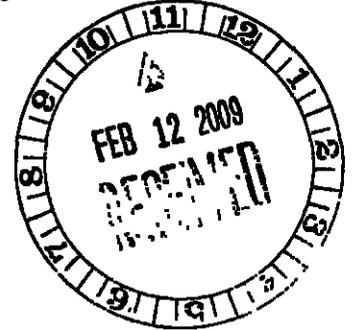
Jon S Corzine  
Governor

EXHIBIT A

Kris Kollun, Esq  
Board Chairman

Richard R Sarles  
Executive Director

**NJ TRANSIT**  
One Penn Plaza East  
Newark, New Jersey 07105-2246  
973-491 7000



October 17, 2008

Mr John K Enright  
Associate General Counsel  
Conrail  
1717 Arch Street, 32<sup>nd</sup> Floor  
Philadelphia, PA 19103

Subject Proposed Abandonment of Lehigh Valley Main Line between MP 2 90 and  
5 17 - Jersey City, Hudson County, NJ  
Future STB Docket No AB 167 (Sub-No 1190X)

Dear Mr Enright

NJ TRANSIT is in receipt of your September 10, 2008 letter informing the State of New Jersey of Conrail's proposed abandonment of the captioned rail line NJ TRANSIT takes no issue with Conrail's "abandonment" of the rail line, as we have previously acquired (from Conrail) portions of this right of way, upon which can be found the shop and yard complex for the Hudson Bergen Light Rail System

Of the two parcels which Conrail alleges that they retain, NJ TRANSIT has no interest in the parcel located between Chapel Avenue and Linden Avenue The other parcel, near Communipaw Avenue, appears to us to already be NJ TRANSIT-owned property NJ TRANSIT requests that Conrail's Real Estate group contact Ms Bernadette Gill, NJ TRANSIT's Director of Property Management, at 973 491 7167 so we can resolve the disputed ownership of this parcel

Additionally, to streamline responses in the future, please forward correspondence pertaining to NJ TRANSIT to Mr David Dieck, Director of Rail Contracts Mr Agrawal has now retired.

Sincerely,

for Steven H Santoro  
Assistant Executive Director  
Capital Planning & Programs

Copy to B Gill  
D Dieck