

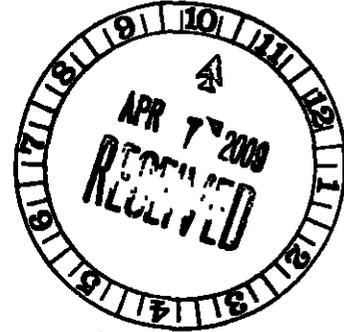
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3 April 2009
by express



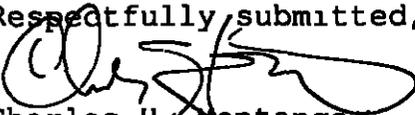
Hon. Anne Quinlan
Secretary
Surface Transportation Board
395 E Street SW
Washington, D.C. 20024

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

Dear Secretary Quinlan:

Enclosed for filing on behalf of City of Jersey City
("City"), please find a motion (1) to toll the time period for
submitting an OFA, and (2) for a seven day extension in time to
reply to a de facto motion for exemption from the OFA process
filed by Conrail on April 1. 224829

Respectfully submitted, 224830


Charles H. Montange
for City of Jersey City

Encls.

cc. Counsel per certificate (w/encls)

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Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

CONSOLIDATED RAIL CORPORATION)
- ABANDONMENT EXEMPTION -) AB 167 (Sub-no. 1189X)
IN HUDSON COUNTY, NJ)

Motion to Toll Time Period
for Submitting OFA
and
Motion for 7-Day Extension of Time to Reply
to Conrail Motion to Reject

City of Jersey City ("City") hereby joins in the motion of CNJ Rail Corporation ("CNJ") and independently moves this Board to toll the time for submitting an offer of financial assistance ("OFA") as set forth below. City also moves for a seven (7) day extension of time to respond in opposition to Conrail's motion, filed April 1, 2009, to reject the OFA process.

Background

City as well as CNJ timely filed notices of intent to file an OFA pursuant to 49 C.F.R. 1152.27(c)(2) in this Consolidated Rail Corporation ("Conrail") proceeding. In addition, both City and CNJ timely requested that Conrail supply information as provided in 49 C.F.R. 1152.27(a).

City also states formally for the record that it also wishes to inspect all documents specified in 49 C.F.R. 1152.27(d)¹ at the same time Conrail makes available the information provided in

¹ These documents include all documents relied upon by Conrail to calculate net liquidation value, including appraisals, title information, and so on. See 49 C.F.R. 1152.27(d) and 1152.36 (exhibit 1).

49 C.F.R. 1152.27(a). These documents basically include any documents relating to the 1152.27(a) information City has sought. City also formally offers to pay Conrail the reasonable costs (1) to duplicate said documents and (b) to express them to City's counsel in lieu of actual inspection on premises. City in addition specifically requests all information and documents made available to CNJ.

In CNJ's notice of intent, CNJ requested a tolling of the period for submitting an OFA until ten days after Conrail provided the information sought and advised the Board.

City sought provision of the information no later than April 8, which City felt would still provide sufficient time for it to prepare and to file an OFA. Conrail has provided no information to date. However, in a pleading evidently filed on April 1, which Conrail styles as a "Reply," Conrail calls on this Board to reject the OFA process here. Conrail's "Reply" in effect is a motion to exempt this proceeding from OFA procedures. Under this Board's generally applicable procedural rules, City - and CNJ - have 20 days in which to reply. 49 C.F.R. 1104.13.

If this Board does not summarily reject the Conrail motion out of hand, City intends to respond in opposition to the motion in accordance with this Board's procedures.² However, in light

² Without waiver of City's right to reply further, City notes that Conrail's motion is unusual at this stage. STB generally rejects requests for exemption from, or rejection of, the OFA

of Conrail's motion, it appears clear that Conrail is not, and

process. The Board has explained that "[t]he OFA provisions reflect a Congressional desire to preserve, wherever possible, any prospect for continuing or resuming rail freight service on corridors that would otherwise be abandoned." Yakima Interurban Lines Association - Abandonment Exemption - in Yakima County, WA, AB 600 (Sub-no. X), served Feb. 17, 2006. The Board has indicated a reluctance to grant such exemptions absent some showing of injury to the applicant railroad (id.), or to the public [Central Michigan Railway Co. - Abandonment Exemption - in Saginaw County, MI, AB 308 (Sub-no. 3X), served Oct. 31, 2003, granting exemption from OFA subject to stringent conditions in order to facilitate a highway project]. Conrail makes no showing of injury to itself (nor could it, for it apparently has illegally sold off all or most of the Branch to a developer for non-rail purposes). Moreover, Conrail makes no showing of injury to the public (nor could it, for the public is seeking to preserve the property for rail use as witnessed by City's notice of intent to OFA). CNJ Rail Corporation has expressed a strong intent to develop a rail transload operation in Jersey City, as witnessed by CNJ's notice of intent to OFA in Conrail -- Exemption -- in Hudson County, NJ, AB 167 (Sub-no. 1190X) as well as in this case [AB 167 (Sub-no. 1189X)]. Based on City's initial evaluation, City would prefer that a transload be developed on the Harsimus Branch rather than the LeHigh line involved in 1190X, because City wishes to use a parcel containing a portion of the LeHigh line for new municipal buildings. Freight transload is fully compatible with City's anticipated rail use of the Harsimus Branch, and would obviate the severe and adverse environmental and historic preservation consequences flowing from Conrail's plan to convert the property into townhouses or, more recently, skyscrapers. Moreover, Conrail admits (Conrail April 1 motion at 10) that restoration of what it calls infrastructure will be expensive, but City obviously is prepared to facilitate that in light of its interest in use of the Branch for passenger rail as well as freight, which was of course the case in the RFERRA case (AB 547X) on which Conrail mistakenly relies. City is thus the obvious party to make an OFA. Moreover, contrary to Conrail's claims at p. 10, the portion of the Branch in which City has notified its intent to OFA and on which the City is focused is not "covered over with other commercial development that is completely incompatible" with rail uses. Accordingly, City's invocation of the OFA process unquestionably is fully consistent with the purpose of the OFA process "to preserve, wherever possible, any prospect for continuing or resuming rail freight service"

will not be, timely providing the information which City has requested for purposes of preparing its OFA, and it is equally clear that Conrail has no intent to make available in a timely fashion the documents required to be made available in the OFA process. City continues to seek that information, and access to the relevant documents, for purposes of preparing its OFA.

Motion to Toll

Since the information and documents to which City is entitled under this Board's rules are not being made available in a timely fashion by Conrail, City joins in CNJ's motion, and independently moves, that the time for submitting an OFA be tolled until ten (10) days after Conrail in fact supplies the requested information, and notifies the Board that it has done so. This Board customarily issues such a tolling order in the circumstances presented here. E.g., Consolidated Rail Corporation - Abandonment Exemption - in Hudson County, NJ, AB 167 (Sub-no. 1190X), served Jan. 7, 2009.

In addition to tolling the time for submission of OFA's, the order should also extend the effective date of any abandonment authorization in this proceeding. Accord, Consolidated Rail Corporation - Abandonment Exemption - in Hudson County, NJ, supra.

City further notes that this Board customarily extends filing deadlines when a contest over rejection of the OFA process

develops. E.g., 1411 Corporation - Abandonment Exemption - in Lancaster County, PA, AB 581X, served August 3, 2001. Conrail in its April 1 motion seeks rejection of the OFA process. The tolling which City seeks will allow the Board and the parties to address Conrail's claim for exemption from/rejection of the OFA process before the expense and resource commitments of engaging further in the process are incurred.

Motion for Extension of Time

Conrail's de facto motion to reject the OFA process before it starts was filed on April 1. Under 49 C.F.R. 1104.13, replies are due on April 21. This is the day after oral argument in Washington, D.C., in D.C. Cir. Nos. 07-1401, et al., the various consolidated petitions for review by Conrail and SLH Properties (Conrail's designated developer of the Harsimus Branch) from this Board's decisions in Finance Docket 34818 that the Harsimus Branch was a line of railroad for which an STB abandonment license was required. City's Seattle-based rail counsel currently expects either to participate in or to be present for the oral argument.³ Because a transcontinental trip by City's counsel to do so is necessary for this purpose, and because other procedural deadlines (governing motions for reconsideration and

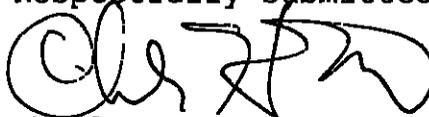
³ As of this time, the Court of Appeals has not issued an order regarding oral argument time allotments. According to the D.C. Circuit Handbook, if more than 15 minutes per side are allocated, an intervenor such as City may participate if its side (STB) consents to a sharing of time.

comments on the "environmental assessment") in this abandonment docket in any event also fall during the interval between April 1 and April 21, it is unduly burdensome for City to prepare and to file a reply to Conrail's April 1 motion by April 21. City therefore moves for a seven day extension, until Tuesday April 28, 2009, for purposes of submitting a reply to Conrail's April 1 motion to reject the OFA process.

Conclusion

For the reasons stated, the time for submitting an OFA should be tolled, and an extension in the time to reply to Conrail's motion to reject the OFA process to and including April 28, 2009, should be granted.

Respectfully submitted,



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Certificate of Service

I hereby certify service of the foregoing on 3 April 2009 by deposit for express (next business day) delivery addressed to Robert Jenkins III, Mayer Brown, 1909 K Street, NW, Washington, D.C. 20006; Eric Strohmeyer, CNJ Rail Corporation, 81 Century Lane, Watchung, NJ 07069.

