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RECEIVED MAY 5 2009 MANAGEMENT STB

May 5, 2009

BY HAND DELIVERY

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

225051

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

225052

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

225053

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

ENTERED
Office of Proceedings
MAY - 5 2009
Part of
Public Record

Dear Secretary Quinlan:

Enclosed for filing with the Board are the original and ten copies of Consolidated Rail Corporation's "Motion to Strike or, in the Alternative, for Acceptance of Reply to Reply." Please date-stamp the enclosed extra copy and return it to our representative.

Sincerely yours,

Robert M. Jenkins III

RMJ/bs

Enclosures

Mayer Brown LLP operates in combination with our associated English limited liability partnership and Hong Kong partnership (and its associated entities in Asia).

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED MAY 5 2009 MANAGEMENT STB

225051

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

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN HUDSON COUNTY, NEW JERSEY

STB NO. AB 55 (SUB-NO. 686X) 225052

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

STB NO AB 290 (SUB-NO. 306X) 225053

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

NOTICES OF EXEMPTION

ENTERED
Office of Proceedings
MAY - 5 2009
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Public Record

MOTION TO STRIKE OR, IN THE ALTERNATIVE, FOR ACCEPTANCE OF REPLY TO REPLY

Motion to Strike

Consolidated Rail Corporation ("Conrail") hereby moves the Board to strike the pleadings that the City of Jersey City (the "City") filed on April 21, 2009, and April 24, 2009—styled, respectively, "Reply of Jersey City to Consolidated Rail Corporation's Motion to Reject the OFA Process and Request for Clarification" and "Verified Statement of Robert D. Cotter."

In the first place, the City's latest pleadings are improper replies to a reply. The City filed an OFA Notice on March 27, 2009, to which Conrail filed a Reply on April 1, 2009. The City then on April 7, 2009, filed a "Motion to Toll Time Period for Submitting OFA and Motion for 7-Day Extension of Time to Reply to Conrail Motion to Reject," which was largely devoted

to the merits of the City's OFA Notice, but argued that more time was necessary for it to make more argument. Conrail filed a Reply to those Motions on April 9, 2009. The City then filed replies to Conrail's Reply in the form of the City's April 21 and April 24 pleadings. These replies should be stricken as a violation of 49 C.F.R. § 1104.13(c).

Second, even were the City's most recent pleadings not improper replies to a reply, they were and are out of time. The STB did not grant the City's request for an extension of time. Nevertheless, the City did not file the statement of Mr. Cotter until April 24, twenty-three days after Conrail's April 1 Reply. The City in its April 21 pleading quoted at some length from that statement, which it had not yet filed. April 21 City Reply at 19-20. The City should not be allowed to grant itself an extension of time through the stratagem of filing a pleading that relies on a statement that is late-filed. Both the statement and the portions of the City's April 21 Reply that relied on it should be stricken.

Third, Mr. Cotter's statement is grounded on a wishful sentence about "investigat[ing]" freight use of light transit, which the City inserted in a Master Plan document it adopted on April 14, 2009, two weeks *after* Conrail's April 1 Reply. In fairness, this post-hoc "evidence" should either be stricken or Conrail should have the opportunity to comment on this effort by the City to introduce material that it has created after-the-fact.

Fourth, the City persists in asserting that Conrail is seeking a "waiver" of the OFA process. Not content with having already made that argument at some length in the City's April 7 Motions (at pages 2-4 and n.2), the City in its April 21 pleading has built an entire edifice of fallacious reasoning around this phony premise. Here again, either the City's attempt belatedly to buttress its argument should be stricken or Conrail should have the opportunity to reply.

For these reasons, Conrail moves that the Board strike the City's April 21 and 24 pleadings. In the alternative, if the Board determines to accept the City's pleadings, Conrail requests that the Board accept the following reply.

Reply

The City in its April 21 pleading builds an elaborate argument around a fallacious premise. Contending that Conrail seeks a "waiver" or "exemption" from the OFA process, the City asserts that Conrail must demonstrate a "compelling public need" for such a waiver. April 21 City Reply at 7-8. The City contends that it is only when the railroad abandonment applicant shows that that its rail line is needed for some compelling public purpose that the OFA proponent must show a realistic prospect of freight rail service continuing or being resumed on the line. If the railroad does not show that its rail line is needed for a compelling public purpose, according to the City, all that is required is that the applicant's OFA "preserv[e] the prospect of resumption of [freight] service." Id. at 8.

The City's argument is wrong on several levels. In the first place, Conrail is not seeking a "waiver" or "exemption" from the OFA process.[1] Rather, Conrail's position is that the Board can and should reject the City's OFA petition on the merits. The law is settled that the purpose of an OFA proceeding is to permit the continuance of rail freight service on a line that will otherwise be abandoned. See, e.g., *Redmond-Issaquah R.R. Preservation Ass'n v. STB,* 223 F.3d 1057- 1061 (9th Cir. 2000). The Board need not initiate an OFA proceeding if it finds either (1) that the OFA proponent has no genuine interest in providing rail freight service or (2) that there

[1] See, e.g., *Los Angeles County Metropolitan Transp. Auth.—Abandonment Exemption—Between Arcadia and Los Angeles, CA,* ICC Docket No. AB-52 (Sub-No. 75X), 1994 WL 42441, *3 (served Feb. 14, 1994) (exemption from OFA requirement granted where right-of-way needed for mass transportation and there was no overriding need for continued freight rail service).

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 WL 1968728 (served May 7, 2008) ("*Los Angeles County*").

Regarding whether the City has a genuine interest in providing rail freight service, the City itself told the Board 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, (served Aug. 9, 2007) ("*City of Jersey City*"), that it and the other petitioners "do not intend to reactivate rail service over the Embankment." Slip op. at 7. The City now says that its thinking has "matured," and provides as evidence a single sentence inserted into the City's Master Plan two weeks after Conrail filed its April 1 Reply to the City's OFA Notice. That sentence says that the City will "[i]nvestigate a shared-use strategy for Hudson Bergen Light Rail to carry freight to local destinations." April 21 City Reply at 19. Aside from the questionable timing of this "evidence," and the fact that it contains no evaluation of or pledge to use ***any*** light rail lines to provide freight service, this sentence says nothing about the Harsimus Branch. There is no light rail today on the Harsimus Branch; there is no plan for light rail on the Harsimus Branch; and there is no budget for light rail on the Harsimus Branch. There is only Mayor Healy's fond hope that he can use the OFA process as "a kind of [federal] eminent domain remedy" to obtain the Harsimus Branch right-of-way for possible use in the future. April 21 City Reply, Healy VS at 4.

Even assuming the City were genuinely interested in acquiring property along the old Harsimus Branch for light rail use at some point in the future, the City is transparently

attempting to misuse the OFA process for that purpose. The City can always exercise its power of eminent domain under state law to acquire property it wants for light rail purposes—including former freight rail property that has been abandoned. But, of course, the City has to pay fair market value for the property it condemns.[2]

In this case, most of the property that the City says it wants is not owned by Conrail, but by a variety of developers to whom Conrail has sold the various properties involved over the past 33 years.[3] Assuming that the STB's decision in *City of Jersey* means that Conrail must obtain authority to abandon the old Harsimus Branch right-of-way, the only interest that Conrail retains in the properties that have been sold off is a constructive easement for rail freight purposes. If the City wants to condemn property for a park, or a trail, or for possible light rail purposes, it cannot use the OFA process as a subterfuge to avoid paying the property owners for the condemnation of their property.[4]

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[2] Mayor Healy suggests at the end of his statement that when the City previously notified Conrail that the City intended to use eminent domain remedies in 2005, "Conrail claimed this was preempted." Healy VS at 3-4. Conrail claimed no such thing. As the record in *City of Jersey City* makes crystal clear, Conrail consistently took the position that the Harsimus Branch was spur and yard track and there was no federal impediment to the City using its eminent domain powers to acquire the Embankment properties or any other part of the old Harsimus Branch. See Verified Statements of Robert W. Ryan (at pages 16-17) and John K. Fiorilla (at pages 1-4), filed April 24, 2006, in Docket No. 34818. It was the City, not Conrail, that claimed, after Conrail had sold off almost all of the property, that the Harsimus Branch was a line of railroad requiring abandonment authority from the STB.

[3] Conrail retains the fee interest only in the first 0.18 miles of the 1.36-mile Harsimus Branch.

[4] The City suggests that if the Board ordered reconveyance of the Embankment properties to Conrail, then Conrail could get paid for the fee value of those properties. April 21 City Reply at 11-12. But, for the reasons Conrail has discussed before, the Board has no reason to order reconveyance of property that was purchased by its current owners in good faith, that has not been used for freight rail service for almost two decades, and that has no realistic prospect of being used for freight rail service. See Conrail's Reply to City Parties "Restatement of Previously Requested Relief and Reservation of Rights," filed March 18, 2009, at 7-11. This applies as well to the various properties east of Marin that have not only been sold, but have been

The City cites *The Burlington Northern and Santa Fe Railway Co.—Abandonment Exemption—In King County, WA—In the Matter of an Offer of Financial Assistance,* 3 S.T.B. 634, 1998 WL 452837 (1998) ("*King County*"), aff'd *Redmond-Issaquah,* 223 F.3d 1061 (9th Cir. 2000), for the proposition that "the motivation of the OFA applicant is not relevant so long as the OFA is consistent with provision of freight rail service." April 21 City Reply at 10. That is ***not***, however, what the Board said. What the Board said is that evidence that the OFA proponent has an ulterior motive "***is*** relevant but is not, by itself, dispositive." 3 S.T.B. at 641; 1998 WL 452837, *5 (emphasis added). What is dispositive is whether the OFA proponent (1) genuinely intends to provide freight rail service and (2) there exists a "real need" for that service. Id.

The Board in *King County* reviewed statements from four different shippers suggesting that they might be interested in freight rail service, but the Board found that those statements provided "no basis for us to conclude that future traffic on the line is other than highly speculative." 3 S.T.B. at 641; 1998 WL 452837, *7. The Board also noted that the cost of rehabilitating the line at issue, to bring it to Class I standards, was substantial. In sum:

> [A]fter considering all the evidence presented by [the OFA proponent] and the other parties, we conclude that the record does not permit us to conclude that the offer is motivated by a desire to provide continued rail service. Nor can we find that continued rail service is likely to result from the offer. That being the case, it would be an abuse of our processes to permit the section 10904 process to go forward. [3 S.T.B. at 640; 1998 WL 452837, *5.]

In this case, unlike the *King County* case, there are ***no*** shippers with even an expressed interest in possibly using freight rail service, much less any shippers that have made any

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redeveloped for retail, office, condominium, and hotel uses. If the City genuinely believes that it has a higher and better public use for those properties than the development it so assiduously promoted in the past, then it should be prepared to pay those property owners for the appropriation of their property. There is no basis for the Board to order reconveyance of properties to Conrail that have no freight rail use.

commitment to do so. Moreover, unlike the line in *King County*, where the basic freight rail infrastructure was in place, there is ***no*** freight rail infrastructure in place on the old Harsimus Branch right-of-way. All trace of the right-of-way has been obliterated by development east of Marin Boulevard (Milepost 0.88), and no track, bridges, or other rail structure exists on the rest of the right-of-way. The City has no concrete, funded plan to build and operate a light rail operation over the old Harsimus Branch right-of-way, much less to operate freight rail service. In light of these facts, to characterize the City's assertions about the possibility of providing freight rail service on the Harsimus Branch as "highly speculative" would be, if anything, an understatement.

The fact of the matter is that the City's OFA Notice is demonstrably ***not*** motivated by a desire to provide freight rail service, nor is there ***any basis*** for the Board to conclude that freight rail service is likely to result from the offer. *King County*, therefore, stands squarely for the proposition that it would be an abuse of the Board's processes to permit the OFA process to go forward in this case.[5]

Roaring Fork Railroad Holding Auth.—Abandonment Exemption—In Garfield, Eagle, and Pitkin Counties, CO, 4 S.T.B. 116, 1999 WL 323347 (1999) ("*Roaring Fork*"), aff'd sub nom. *Kulmer v. STB*, 236 F.3d 1255 (10th Cir. 2001), stands for exactly the same proposition. In that case too there was a rail line in place and the OFA proponent identified potential shippers. The STB emphasized that "[t]he OFA process is designed for the purpose of continuing to provide freight rail service, and is not to be used to obstruct other legitimate processes of law

[5] Contrary to the City's argument that *King County* should be read as a case where the Board found that there was a "compelling public need" (supposedly, for a trail) that required the OFA proponent to show an "overriding continued rail need" (April 21 City Reply at 10), there is nothing in the Board's decision in *King County* that suggests that the Board either found a "compelling public need" for a trail or placed any greater burden on the OFA proponent there than in any other case where the motivation of the OFA proponent was suspect.

(whether Federal, state, or local) when continuation of such service is not likely." 4 S.T.B. at 119; 1999 WL 323347, *3 (citing *King County*). The STB found that the shippers identified by the OFA proponent either could not or would not support continued freight rail service on the line. Id.

Significantly, the STB in *Roaring Fork* also rejected the use of the OFA process as a subterfuge to acquire the line for non-freight rail purposes. The owner of the line had sought abandonment authority in order to use the line for light rail passenger service. The OFA proponent argued that its objective was also to acquire the line for light rail purposes, and that it could provide freight service as an adjunct to light rail service. Given the thin evidence of shipper support for freight rail service, the STB held that "it is not appropriate for us to force the sale of the line based on the offer that has been submitted, as the statutory objective of continued freight rail service would not be likely to result from the OFA proposal." Id.

The City attempts to distinguish *Roaring Fork* on the ground that the owner had sought abandonment authority in order to provide light rail service and the STB was loathe to interfere with that plan. April 21 City Reply at 13. But the STB in *Roaring Fork* had denied the owner an exemption from the OFA process. 4 S.T.B. at 116; 1999 WL 323347, *1.[6] Accordingly, the standard the STB applied was no different than that applied in any other abandonment proceeding. The STB emphasized, as it had in *King County*, that it was incumbent on the OFA proponent "to demonstrate that its OFA is for continued rail freight service." 4 S.T.B. at 119; 1999 WL 323347, *3. In a situation where the OFA proponent had demonstrated no realistic need for freight rail service, the STB held that the OFA process would not be allowed to continue

[6] The STB in dictum did state that it "would have been appropriate" to exempt the line from the OFA process, but its holding that the OFA process should be terminated was not grounded on any exemption. 4 S.T.B. at 121; 1999 WL 323347, *3.

on the basis of alleged possibility that the OFA proponent could piggy-back freight rail service onto light rail service.[7]

The City's situation here is even less tenable than was the failed OFA proponent's in *Roaring Fork.* Here, there is no rail line in place, and the City can point to no shippers with interest in freight rail service. The City argues that it is enough for the City's OFA to hold out "the prospect of resumption of [freight] service." April 21 City Reply at 8. But that is clearly not enough. Under both *King County* and *Roaring Fork*, the City must show both that the purpose of its OFA is to provide freight rail service and that there is a "real need" for such service. The mere possibility that if the City acquired the right-of-way it might be possible at some point in the future for the City, first, to establish light rail service and, then, perhaps, to provide freight service is wholly inadequate to support an OFA—in the abstract, after all, almost anything is possible.[8]

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[7] The City cites a footnote in *Roaring Fork* in which the STB noted that "in view of the Federal funding that [the owner] has lined up for [its light-rail project], this case presents the anomalous situation in which any future reinstitution of rail freight service (as an adjunct to passenger service) appears to be more likely under [the owner's] plans for the future of the right-of-way than through the OFA." April 21 City Reply at 13; 4 S.T.B. at 121 n.19; 1999 WL 323347, *3 n.19. But the STB also stressed in the immediately prior footnote that "our decision here is in no way contingent upon the representation that rail service may be reinstituted if there is a sufficient demand for such service." 4 S.T.B. at 121 n.18; 1999 WL 323347, *3 n.18.

[8] The City's argument that "this Board's 'Modified Certificate' program has long envisioned similar acquisitions for the [sic] such purposes without any showings of current rail need" only underscores the weakness of its OFA position. April 21 City Reply at 8. The Board's Modified Certificate program only applies to rail lines that have been "abandoned or approved for abandonment" and that have been "acquired (through purchase or lease) by a State [including political subdivisions thereof]." 49 C.F.R. § 1150.21. This program does not give the Board any authority to force the sale of a line to the State of New Jersey or any of its subdivisions. It simply provides that if a State acquires a line that has been abandoned or approved for abandonment, the State may contract with another party to operate common carrier service on the line (under a "modified certificate") without the State itself becoming a common carrier or the operation being subject to the STB's abandonment authority. 49 C.F.R. § 1150.22.

Conrail has also cited *Union Pacific Railroad—Abandonment and Discontinuance Exemption—In Los Angeles County, CA,* STB Docket No. AB-33 (Sub-265X), 2008 WL 1968728 (served May 7, 2008) ("*Los Angeles County*"), for the propositions that "[t]he OFA process is designed for the purpose of continuing to provide freight rail service" and "[i]t is well settled that the Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing freight rail service or that there is no likelihood of future traffic." 2008 WL 1968728. The City argues in response that there were physical constraints on freight rail operations on the line at issue in *Los Angeles County* that the City claims are not present on the Harsimus Branch. Conrail disagrees strongly with the City's position that there are not also serious physical constraints on freight rail operations over the Harsimus Branch.[9] However, the Board does not even have to reach that issue— because, as in *King County* and *Roaring Fork*—the Board in *Los Angeles County* focused first on the fact that the OFA proponent in that case had identified no shippers who were

[9] The Harsimus Branch begins at CP Waldo (MP 0.00), where the-right of-way is hemmed in on all sides by the Jersey City and Harsimus Cemetery, the PATH tracks, and Conrail's National Docks tracks. There are no shippers on that right-of-way and no ability to locate shippers or a transload operation there, because there is no road access, and no realistic ability to achieve road access. (The City says there is a "switch at Waldo with an active Conrail freight line." April 21 City Reply at 23. But that switch does not, and could not, serve any shippers.) At 0.18 miles, where Conrail's property ownership ends and the ownership of the eight Limited Liability Partnerships that purchased the Embankment properties begins, the right-of-way is elevated all the way to Marin Boulevard (MP 0.88). Here again, there are no shippers, and no realistic possibility of locating a transload facility in such constricted urban space. East of Marin Boulevard are retail establishments, condominiums, office buildings, and hotels. No trace of the right-of-way remains. The City says it "expects to work with developers of proposed new buildings [east of Marin Boulevard]." April 21 City Reply at 23. But the City points to no shipper that could be located or served in such a high-value neighborhood, particularly at the cost of displacing the kind of high-end development the City has worked so hard to establish in the area. (The City says that the Bed, Bath & Beyond that sits where the old right-of-way used to run east of Marin Boulevard is slated to be removed for redevelopment. Id. Even assuming this is so, the City makes no suggestion that either the current owner or the City has identified or has any desire to see a freight rail shipper or industrial transload facility located there.)

interested in freight rail service. Id. Even assuming that the Harsimus Branch did not present daunting physical constraints on freight rail service, if there is no demonstrated need for such service, then *Los Angeles County* is yet another case in which the Board has made clear that an OFA will be dismissed.[10]

The City too appears to recognize the weakness of its argument regarding the holding of *Los Angeles County*, because it tries to claim that *Los Angeles County* is "another compelling public need" case. April 21 City Reply at 14. That claim is wrong for three reasons. First, the City's assertion that "the same trackage" was involved in *Los Angeles County* and the Board's subsequent proceedings in *Los Angeles County Metropolitan Transp. Auth.—Abandonment Exemption—In Los Angeles County, CA*, STB Docket No. AB 409 (Sub-No. 5X), 2008 WL 2414809 (served July 17, 2008) ("*LACMTA*"), is wrong.[11] Second, there was not a word in *Los Angeles County* about "compelling public need" and no request by Union Pacific Railroad to be exempted from the OFA process with respect to the Santa Monica Industrial Lead. Third, and decisively, the Board in *Los Angeles County* observed:

> [LACTMA's] suggestion in its reply that it will seek authority to abandon the 0.31-mile segment [of the Santa Monica Branch over which Union Pacific Railroad had had trackage rights] at some

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[10] Contrary to the City's argument, there is no requirement for the Board—confronted with an OFA notice that clearly fails the Board's freight rail "purpose" and "need" tests—nevertheless to make the parties go through a pointless OFA process. In *Los Angeles County*, for example, the Board rejected the OFA proponent's notice at the outset, on the basis of the railroad's reply seeking that relief. In *Roaring Fork*, shortly after the OFA notice was filed and the Office of Proceedings postponed the effective date of the exemption, the owner of the line filed a motion to dismiss, which the Board granted. 4 S.T.B. at 116; 1999 WL 323347, *1. In this case, as in those cases, the Board has all the information it needs to reject the City's OFA petition. No legitimate interest would be served by permitting the OFA process to continue.

[11] The relevant part of the *Los Angeles County* case involved Union Pacific's Santa Monica Industrial Lead from Milepost 485.61 to Milepost 485.69. The subsequent *LACTMA* case involved LACTMA's portion of the Santa Monica Branch between Milepost 485.69 and 486.00 (over which Union Pacific had had trackage rights).

> future point does not alter our analysis here. The two segments are separately owned, and they will be separately addressed in separate proceedings. [2008 WL 1968728, n.6.]

In sum, *King County, Roaring Fork,* and *Los Angeles County* did not concern "exemptions" from the OFA process, and neither does Conrail's request that the Board reject the City's OFA Notice. All of these cases involved the Board's normal application, when an OFA request is challenged on the merits, of its settled requirements that the OFA proponent demonstrate (1) that the OFA proponent genuinely desires to provide freight rail service and (2) that there is a real need for such service. The City cannot avoid its obligation to make that showing by misconstruing the holdings in *King County, Roaring Fork,* and *Los Angeles County,* and wrongly claiming that Conrail has filed a "de facto" petition for exemption.

Nor can the City legitimately claim that there is anything to be gained by allowing the OFA process to continue. No information that Conrail could provide under 49 C.F.R. § 1152.27 would make a whit of difference to the City's ability to show that there are shippers that would be interested in using the old Harsimus Branch right-of-way to haul their traffic. The City made quite clear in its April 21 Reply that it cannot and will not point to any real shippers with real interest in shipping freight. Mayor Healy's undefined and unfunded idea about providing light rail service over the Harsimus Branch is itself highly speculative. The suggestion that shippers might come out of the woodwork to support freight rail service over a non-existent light rail line in a thoroughly urban neighborhood is speculative squared.

In such a situation, the Board has repeatedly made clear that it will not permit the OFA process, which is designed solely for the purpose of continuing to provide freight rail service, to be misused "to obstruct other legitimate processes of law." *Roaring Fork,* 4 S.T.B. at 119; 1999 WL 323347, *3 (citing *King County*). In this case, if the City is serious about a light rail operation over the old Harsimus Branch, nothing will prevent it from condemning whatever

property it wants once Conrail has abandoned the right-of-way. An illegitimate OFA process should not be allowed to obstruct the legitimate abandonment process.

For the foregoing reasons, the City's OFA Notice should be rejected.

Respectfully submitted,

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Dated: May 5, 2009

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2009, I caused a copy of the Conrail's "Motion to Strike or, in the Alternative, for Acceptance of Reply to Reply" to be served by first class mail (except where otherwise indicated) on those appearing on the attached Service List.

Robert M. Jenkins III

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