

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket # AB 167 1190 (X)

CONSOLIDATED RAIL CORPORATION
- ABANDONMENT EXEMPTION -
- IN HUDSON COUNTY, NJ -

OFFER OF FINANCIAL ASSISTANCE (OFA)

MOTION TO AMEND

AND

A REQUEST FOR AN EXTENSION OF TIME

Motion to Amend

I, Eric S. Strohmeier, in my individual capacity, hereby moves to amend my Offer of Financial Assistance (OFA) previously filed in the above captioned proceeding. Mr Riffin, the co-Offeror, joins in this motion as well.

The purpose of this motion is to remove from our OFA a section of the line of railroad between MP 4.9 and MP 5.17. In our joint reply filed on September 1, 2009, the Offerors identified this portion as the “Liberty Storage” portion of the line. As previously stated, there is a serious interest by the City of Jersey City to acquire this portion of the right of way for a new public works facility.

The Offerors in this proceeding have reached an agreement with the City of Jersey City

that is satisfactory to all parties involved. These negotiations, which have been ongoing with the City's attorney's for quite some time now, were achieved largely through the efforts of CNJ Rail Corporation and its officers.

The Board has always encouraged opposing parties to reach consensus amongst themselves. In this instance, those negotiations proved successful and the issue of whether or not the Board should exempt the Liberty Storage section from the OFA process is now moot.

It is the Offeror's preferred approach to attempt to reach mutual agreements wherever possible. To that extent, the Offeror's request the following:

Request for an Extension of Time

As was stated above, through negotiation, the Offerors and the City have been able to reach a mutual understanding regarding the Liberty Storage portion of the line.

In keeping with our preferred approach of consensus building, the Offerors respectfully requests a brief extension of time in this proceeding so that they may attempt to reach an agreement with NJ Transit (NJT) regarding the short segment of the line NJ Transit *may* own. I use the word "may" because the Offerors' still haven't yet determined precisely what NJ Transit actually owns. It appears a portion of the line was conveyed to NJ Transit, but whether or not other portions were conveyed to NJT are not yet clear.

As had been mentioned in our joint answer filed on September 1, 2009, the Offerors made contact with NJ Transit initially to discuss our OFA with them. To date, they have not yet made a substantial response to our initial inquiries yet. However, that has not diminished our desire to attempt to reach a voluntary settlement with NJT.

Further hindering our efforts has been the vacation schedules of Jersey City's inside and outside counsels. Jersey City's counsel was on vacation the last two weeks of August. The City's lead outside council for railroad related matters, Mr. Charles Montange, Esq. has been on vacation since Labor Day weekend and is not due to return until after the 18th of September. It is pretty difficult to arrange the appropriate meetings when critical personnel and advisers are on vacation.

As the Board itself questioned in the show cause order of August 12, at first glance, it might appear that the Offeror's did appear to reverse their position from the position previously stated by CNJ Rail. However, at the time those comments were made, CNJ was still in the very early stages of discussions with the City regarding a variety of issues. One of the issues was the other abandonment proceeding currently before the Board (see STB Docket # AB 167 - 1189 - X *Consolidated Rail Corporation - Abandonment Exemption - In Hudson County NJ*).

In that proceeding, both CNJ Rail, and the City filed Notices of Intent to File OFA's in

that proceeding. Of critical note in that proceeding, was the City's extensive discussion of its desire to use not only the rail line (Harsimus Branch) in that proceeding, but the entirety of NJ Transit's Hudson Bergen Light Rail System for a modern European style Freight Light Rail Circulator System. The City, however, did not discuss in detail how that system might interface with the remainder of the national rail freight system.

CNJ however, did begin to think about just how such a system might work. Because the City's efforts describe a system that would need to interface with the remainder of the national network, CNJ looked for a location where a "transfer facility" might be most appropriate. Such a facility would likely need to be near a major yard area for marshaling cars, transferring product, etc. A quick review of potential locations revealed just one ideal location. Somewhere in the area of Milepost 3.3, plus or minus along the line which is the subject of this proceeding, is the most ideal location for a transfer point. Therefore, the Offerors decided to include the portion NJ Transit most likely control's in the OFA.

At this point, the Offerors have no way of knowing whether or not line underneath the NJ Transit's facilities might be needed, in whole, or in part, to facilitate an interface or transfer point between the City's proposed freight circulator system over NJ Transit's light rail line and the rest of the national rail system.

Therefore, the Board might inadvertently cause serious harm to the City's efforts along the Harsimus Branch if the Board prematurely terminates the OFA process in this proceeding and disposes of the common carrier obligation in that portion of the line before the Offerors, CNJ, and City officials have an opportunity to arrange a joint meeting with NJ Transit to at least attempt to see if there is any common ground that could lead to a voluntary agreement. In addition, the Offerors would like to further explore with Jersey City, the City's effort at developing its proposed system and just what their vision for this system might all entail.

In light of the agreement already reached with the City, the Offerors respectfully move that the proceeding be held in abeyance for 60 - 90 days to permit the Offerors, CNJ Rail, and the City sufficient time to hold a meaningful discussion with NJ Transit. The result of the meeting could lead to a more complete record and a possible settlement of this issue without the Board having to impose a solution of its own upon the parties. Should the Board choose to make such a decision now, that decision would be developed from a less than complete record. The Offerors would respectfully ask that the Board permit the record to be made as complete as possible.

Therefore, I, in my individual capacity as an Offeror in this proceeding, and Mr Riffin respectfully request that the Board grant the relief requested herein and for any other relief that may be just and equitable.

Respectfully submitted,

Eric S. Strohmeyer / s /

Eric S. Strohmeyer
Offeror

James Riffin / s /

James Riffin
Offeror

Dated: September 11, 2009

Certification:

I, Eric S. Strohmeyer, do solemnly swear that I severed by Email and First Class Mail a copy of this motion upon Mr. Robert M Jenkins, Esq, counsel for Consolidated Rail Corporation.

By: *Eric S. Strohmeyer /s/*

Dated: September 11, 2009