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September 17, 2009

**BY HAND-DELIVERY**

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

Re: STB Docket No. AB-167 (Sub-No. 1190X)  
Consolidated Rail Corporation—Abandonment  
Exemption—In Hudson County, NJ

**ENTERED**  
Office of Proceedings

**SEP 18 2009**

**Part of  
Public Record**

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are the original and ten copies of "Reply of Consolidated Rail Corporation to Offerors' Request for an Extension of Time." Please date-stamp the extra copy of this pleading and return it to our representative.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'RMJ', with a long horizontal line extending to the right and ending in a small upward-pointing arrowhead.

Robert M. Jenkins III

RMJ/bs

Enclosures



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB NO. AB 167 (SUB-NO. 1190X)**

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

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**NOTICES OF EXEMPTION**

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**REPLY OF CONSOLIDATED RAIL CORPORATION  
TO OFFERORS' REQUEST FOR AN EXTENSION OF TIME**

**ENTERED  
Office of Proceedings  
SEP 18 2009**

**Part of  
Public Record**

**INTRODUCTION**

Ten months ago, Consolidated Rail Corporation (“Conrail”) filed its notice of exemption in this proceeding. Nine months ago, CNJ Rail Corporation (“CNJ”) filed its notice of intent to file an Offer of Financial Assistance (“OFA”). More than a month ago, James Riffin and Eric Strohmeyer (“Offerors”) purported to step into CNJ’s shoes and file an OFA. Shortly thereafter, on August 12, 2009, the Director of the Office of Proceedings issued an order (“Show Cause Order”) directing the Offerors to show cause why the proceeding should not be exempted from the OFA process and directing the Offerors to file their response to the Show Cause Order by September 1, 2009, and Conrail to file a reply by September 11, 2009. The Offerors filed their response on September 1. Then, on the day that Conrail’s reply was due and filed, the Offerors moved to amend their OFA and hold the entire proceedings in abeyance so that they can attempt to negotiate with the City of Jersey City (the “City”) and New Jersey Transit (“NJT”) over the possibility of a different OFA proposal.

Conrail, of course, does not oppose Offerors' motion to amend their OFA to exclude the property between Milepost ("MP") 4.9 and MP 5.17 that the City wants to use for public purposes. But nothing in the Offerors' latest pleading cures the fatal deficiencies in their OFA with respect to the remaining property. They still have not provided any evidence of genuine shipper interest and need for a sand and stone transload facility, any credible operating plan, any demonstration of financial responsibility, any community support, or any ability to conduct rail operations without interfering with current or planned public-purpose uses of the property. Indeed, it is unclear whether the Offerors continue to argue for a "transload" facility to which unit trains of sand and stone would move under trackage rights over other railroads' freight lines or whether they are now suggesting that they could provide a "transfer" facility to move unspecified freight "product" over NJT's light rail passenger system. In any event, the "transfer" facility idea is even more speculative and unsupported than the "transload" facility. Both fail utterly to meet *any* of the criteria for a viable OFA.

It is time to bring this charade to an end: The Board should reject the Offerors' request for extension of time and exempt this proceeding from the OFA process. Alternatively, the Board should reject the Offerors' OFA on the merits.

### **ARGUMENT**

It has been clear from the beginning of the OFA process in this case that there was little substance to CNJ's OFA gambit. As the Board has noted, despite the name it has chosen, CNJ is not a railroad. *See Maryland Transit Admin.—Pet. for Dec. Order*, STB Fin. Dkt. No. 34975 (served Sept. 19, 2008), slip op. at 2 n.3 ("CNJ does not own any rail assets or conduct any rail operations.") Indeed, CNJ does not even appear to be a legal business entity.<sup>1</sup> Eric Strohmeyer

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<sup>1</sup> The New Jersey State Business Gateway Service, as of September 10, 2009, listed CNJ as "DISSOLVED WITHOUT ASSETS."

is also not a railroad and has no discernible railroad experience. James Riffin asserts that he is a railroad, but the Board has found he is not a railroad and that he provides no rail service. *See James Riffin—Pet. for Dec. Order*, STB Fin. Dkt. No. 35245 (served Sept. 15, 2009).

Nevertheless, the Board has bent over backward to give Messrs. Strohmeyer and Riffin the opportunity to show that they have a bona fide OFA that overrides any public use for the property they seek to condemn through the OFA process. Strohmeyer and Riffin have failed to demonstrate that they have a bona fide OFA at all, much less one that overrides the public uses for the property.

In their September 11 pleading, Strohmeyer and Riffin have eliminated from their OFA one of the parcels for which the City plans a public use, but they have provided no evidence whatsoever that their OFA is bona fide with respect to the remaining parcels. In particular:

- The Offerors have not established their financial responsibility. All they have submitted is an unsigned financial statement from Mr. Riffin that is unsupported by any documentation.
- The Offerors have not demonstrated shipper support or commercial need for rail service on the line. Indeed, they have never submitted a verified statement from Dameo Trucking, which was purportedly going to be their transloader, and they have not submitted a single verified statement or even a letter from any shippers.
- The Offerors have not demonstrated operational feasibility. Their removal from their OFA of the parcel between MP 4.9 and MP 5.17 does nothing to address the numerous operational impediments further north of that segment on the line, much less show how they expect to obtain trackage rights over line-haul railroads to operate unit trains of sand and stone.
- The Offerors have not demonstrated that their plan is financially viable. Nowhere do they make any provision for the costs of construction, nor is there any credible support for their revenue projections.
- The Offerors have not demonstrated that their plan for sand and stone storage and transloading is compatible with the City's

residential redevelopment plans for the parcel between MP 3.9 and MP 4.5.

- The Offerors have not demonstrated how their plan to cross NJT's light rail lines twice at grade and appropriate a 20-foot wide longitudinal swath of NJT's right-of-way is compatible with NJT's light rail operations.

Instead, the Offerors ask the Board to hold the proceeding in abeyance for 60-90 days so that they can talk to NJT and the City about establishing a "transfer facility" in the area of MP 3.3 to establish a connection with NJT's light rail system to support a "European style Freight Light Rail Circulator System" over NJT's entire Hudson Bergen Light Rail System.<sup>2</sup> This is a completely unfounded request.

*First*, it is far too late for the Offerors to be asking the Board for the opportunity to see if, through meetings with NJT and the City, they can conjure up a rationale for establishing a "transfer facility" to connect NJT's passenger light rail system to the nation's freight rail system. As the Board is well aware, Board regulations set strict time limits for OFAs, and the Board strictly construes such time limits. *See Chelsea Property Owners—Abandonment—Portion of the Consolidate Rail Corporation's W. 30th Street Secondary Track in New York, NY—in the Matter of Financial Assistance*, Docket No. AB-167 (Sub-No. 1094), 1993 WL 274727, at \*3

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<sup>2</sup> The Offerors' repeated changes of position with respect to the application of their OFA to NJT's property are simply beyond the pale. Originally, as the Board has noted, Mr. Strohmeyer (at that time appearing "on behalf of CNJ Rail Corporation") asserted "CNJ does *not* intend to include in its OFA any section, or portion, of the line that has been previously sold to New Jersey Transit for their Light Rail maintenance facilities or commuter parking lots." August 12 Order at 3. Then, in their Answer to the Board's Show Cause Order filed September 1, Messrs. Riffin and Strohmeyer asserted that that pledge was conditional on Conrail or NJT demonstrating that the Offerors' using a portion of NJT's property to provide rail service to Suydam Partners (a supposed potential shipper that Riffin and Strohmeyer never contacted) would "unduly interfere" with NJT's light rail operations. Answer at 11-12. Then, in their September 11 Request for Extension of Time, they asserted that the reason they had included a portion of NJT's property in the OFA was that it would be an "ideal location for a transfer point" to or from NJT's entire light rail system. September 11 Request at 3. This is an obvious post hoc fabrication, apparently prompted by the Offerors' loss of confidence in the viability of their OFA.

(served July 22, 1993). It is incumbent on OFA proponents to timely demonstrate a bona fide OFA. They cannot be permitted to drag out the OFA process with requests for more time to develop an OFA, particularly when their belated suggestion is as obviously speculative as the Offerors' "transfer facility" idea.

Effectively, the Offerors seek to reopen the OFA process, but they cannot claim any change in circumstances or new information that could possibly justify such reopening. The City raised the speculative possibility of a "modern European-style Freight Light Rail Circulator System" on the Harsimus branch in *April*, in *Consolidated Rail Corp.—Abandonment Exemption—In Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 1189X) ("*Harsimus* proceeding"). See Reply by Jersey City to Consolidated Rail Corporation's Motion to Reject the OFA Process and Request for Clarification at 19-20 (submitted April 21, 2009, in the *Harsimus* proceeding); see also Verified Statement of Robert D. Cotter ("Cotter V.S."), *passim* (submitted April 23, 2009, in the *Harsimus* proceeding). CNJ, which entered an appearance in the *Harsimus* proceeding, was served with both of these pleadings. Yet, the Offerors did not discuss the relationship between the City's light freight ideas for the Harsimus branch and the Offerors' own OFA proposal until they sought the extension of time on September 11, 2009.<sup>3</sup>

Second, the "European-style Freight Light Rail Circulator" about which the City speculated in April could hardly be deemed a "proposal" or a "plan." It was never put forward in

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<sup>3</sup> The Offerors' silence on the City's proposal up until September 11 is even more puzzling in light of the fact that, in *April*, after seeking an extension of time, CNJ filed an extensive pleading that included a discussion of statements made by the Mayor of Jersey City in the *Harsimus* proceeding about the City's preference for an OFA on the Harsimus Branch. See Reply of CNJ Rail Corporation, submitted Apr. 24, 2009, in the *Harsimus* proceeding, on the 10th to the 12th unnumbered pages. In light of CNJ's close attention to the *Harsimus* proceeding, there is no conceivable excuse for the Offerors to have waited until now to assert the possibility (if there is any) of a marriage between a possible City OFA in a separate proceeding and their own proposal in the instant matter.

an OFA, and the City and Mr. Cotter made clear that it was very much at the exploratory stage. *See Cotter V.S.* at ¶ 2. Currently, the STB does not even have jurisdiction over the Harsimus Branch. *See Consolidated Rail Corp. v. STB*, 571 F.3d 13 (D.C. Cir. 2009). The Offerors' suggestion that the OFA process in this case should be held up to preserve the possibility of an OFA in another case that has been *vacated* can and should be rejected out of hand.

Third, the Offerors shed no light on the relationship between the aggregate transload and storage facility that they have proposed for the portion of the Lehigh Valley Main Line that they are seeking and the light freight rail operation about which the City speculated in the *Harsimus* proceeding. The Offerors allege that the disposition of their OFA could affect the City's plans (which, as noted above, are not the subject of an OFA that was ever filed and that relate to a proceeding that has been vacated). But in describing the possibility of providing European-style light rail freight service on the Harsimus line, the City did not mention any plans or need to use the Lehigh Valley in connection with the service. Indeed, in discussing light freight service—which Mr. Cotter made clear was merely being “investigate[d]” (*Cotter V.S.* at ¶ 2)—Mr. Cotter stated that the service would “connect the Harsimus Branch to the existing light rail system, which runs along Washington Street in downtown Jersey City” (*id.* at ¶ 3). Regardless of the Offerors' views on the matter, the City, at least, did not seem to think that the Lehigh Valley was essential to the light freight service that it was investigating.<sup>4</sup>

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<sup>4</sup> In addition, in a verified statement submitted by the City with the April 21, 2009 filing in the *Harsimus* proceeding, the Mayor of Jersey City stated that the City preferred OFA freight operations on the Harsimus line, rather than (*not* together with) OFA freight operations on the Lehigh Valley. *See Verified Statement of the Honorable Jerramiah Healy, Mayor, City of Jersey City* at ¶ 2 (page 2) (“We prefer transload on the Harsimus Branch *as opposed to* the Lehigh....”) (emphasis added). Thus, there is no reason to think that the City's light rail idea—which is not even pending before the Board—has anything to do with the Offerors' OFA.

Fourth, NJT did not endorse the City's OFA speculation in the *Harsimus* proceeding and has never agreed to freight operations on its light rail passenger system. There is even less reason to think that NJT would welcome an overture from individuals like Messrs. Strohmeyer and Riffin to cross over NJT tracks at grade, appropriate NJT right-of-way, and set up a "transfer facility" to feed freight traffic onto NJT's system

Fifth, the City's inchoate OFA speculation in the *Harsimus* proceeding suffered from many of the same fundamental defects as the Offerors' OFA in this proceeding. The City never identified a single shipper, there was no discernible operating plan, and there was no financial plan. Even assuming that the City had ever actually submitted an OFA, there is no reason to believe that it would ever have been approved.

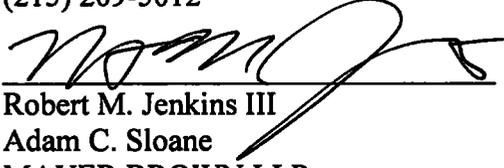
Thus, the Offerors' suggestion that they can buttress their OFA by seeking the opportunity to meet with the City and NJT to talk about a transfer facility for a non-existent and highly unlikely freight rail operation over NJT's passenger system is completely unfounded and out of time. Regardless of the accuracy of the various representations in the Offerors' request for an extension of time—to the extent those representations can even be deciphered—it is clear that the Offerors have failed to provide adequate evidence to support an OFA. It also is clear that the Offerors' dilatory tactics pose a threat to the integrity of the Board's OFA processes.

**CONCLUSION**

The Offerors have prolonged these proceedings enough. The Board should deny their request for extension of time. The Board can and should then proceed immediately to exempt this proceeding from the OFA process or deny the Offerors' OFA on the merits.

Respectfully submitted,

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Dated: September 17, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2009, a copy of the Reply of Consolidated Rail Corporation to Offerors' Request for an Extension of Time was served by overnight mail on:

Eric Strohmeyer  
81 Century Lane  
Watchung, NJ 07069

James Riffin  
1941 Greenspring Drive  
Timonium, MD 21093

  
Robert M. Jenkins III