



CNJ Rail Corporation

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September 23, 2009

Honorable Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, D C 20024

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

EXPEDITED HANDLING REQUESTED

Dear Acting Secretary Quinlan,

Please find transmitted herewith Mr. Eric S. Strohmeyer's *Second Request for an Extension of Time*. I previously submitted an OFA with Mr. Jim Riffin in the above captioned proceeding. If you have any questions or concerns, please contact the undersigned..

On Behalf of CNJ Rail Corporation and in my individual capacity as an Offeror in this proceeding,

Respectfully submitted,

/s/ Eric S. Strohmeyer

Eric S. Strohmeyer
Vice President, COO
CNJ Rail Corporation
(908) 361 – 2435 (direct line)

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET # AB 167 1190 (X)
CONSOLIDATED RAIL CORPORATION
ABANDONMENT EXEMPTION
IN HUDSON COUNTY, NJ

OFFER OF FINANCIAL ASSISTANCE

SECOND REQUEST FOR AN EXTENSION OF TIME
(EXPEDITED HANDLING REQUESTED)

Now come your Offerors, Mr. Eric S. Strohmeyer and Mr James Riffin. The purpose of this pleading is to request a brief extension of time in order to permit the Offerors an opportunity to respond to the late-filed comments of New Jersey Transit (NJT) The Offerors request a brief extension of time until Wednesday, September 30, 2009.

On August 12, 2009, the Board directed the Offerors to Show Cause as to why the Board should not exempt Parcel C (which comprises certain segments of a line of railroad which is the subject of the above captioned proceeding), on its own motion, from the provisions 49 USC 10904.

On September 1st, 2009, the Offerors responded to the Board's Show Cause Order. On September 11th, 2009, Conrail filed its response.

The Offerors, after having reached agreement with the City of Jersey City over excluding

the section of the line from MP 5.17 to MP 4.8, requested a 60 - 90 day extension of time in order to see if a similar agreement could be reached with NJ Transit. To date, the Board has not yet ruled on that first request.

On September 19, 2009, Ms. Suzanne L Silverman, Deputy Attorney General for the State of New Jersey, entered her appearance in this proceeding on behalf of New Jersey Transit. In her pleading, Ms Silverman states: "At this time New Jersey Transit wishes to participate in this proceeding".

The Offerors have no objection to the Board accepting into the record New Jersey Transit's pleading, **provided however**, that the Offerors are permitted an opportunity to respond to the comments contained therein. Pursuant to the Board's regulations, responses to pleadings are normally due 20 days later. In this case however, the Offerors only need until Wednesday, September 30th, 2009, to respond to the comments filed by NJ Transit.

Offerors do not oppose NJ Transit's decision to intervene in this proceeding. The Offerors do however, find it to be a little disconcerting that NJ Transit is claiming that "It has **recently** come to our attention that NJ Transit may be adversely affected by any Board decision to grant Mr. Riffin's and Mr. Strohmeier's petition for an OFA on property referred to as Parcel C in the above referenced matter." (Emphasis added.)

The Offerors would like the Board to note, that when Conrail filed its Verified Notice Exemption in this proceeding, one of the parties it served notice upon was NJ Transit. As such, NJ Transit has known of this proceeding since November of 2008. It is now September of 2009.

NJ Transit has been fully aware of this proceeding for some time now. Pleadings submitted to the Board by the Offerors clearly indicate that Offerors informed NJ Transit about their OFA. In addition, NJ Transit was fully aware of the Board's subsequent show cause order for some time now. For reasons unknown, NJ Transit offers no explanation as to why it waited until 8 days after Conrail's response was due to file their comments. NJ Transit does not ask for leave to late-file their comments, nor do they seek to petition to intervene. They simply state they wish to participate and submit documents they claim are verified statements. It should be noted that the documents signed by Ms. Gill and Mr. North were not authenticated by a Notary, nor do they contain a 'under penalty of perjury' clause. As such, they are merely unverified statements, and pursuant to the Board's Rules, have no evidentiary value.

We pray the Board will note, that when the Offerors where able to reach a reasonable agreement and understanding with the City of Jersey City and sought an extension of time to see if the same could be reached with NJ Transit as well, only then did NJ Transit finally come forth and elect to participate in this proceeding.

Since NJ Transit has elected to participate in this proceeding, the Offerors only ask that the Board permit the Offerors an opportunity to respond to NJ Transit's pleading. Permitting us to do so will lead to a more complete record.

There is Board precedent for permitting replies to pleadings made by parties who had not

substantially participated in an ongoing proceeding at an earlier stage of the proceeding. In FD 33388 (Sub No.100) - *CSX Transportation et al, Merger and Acquisition, Consolidated Rail Corporation*, the Board permitted and accepted Norfolk Southern (NS), CSX Transportation, and Conrail's response to CNJ Rail's and James Riffin's pleadings in that proceeding. NS argued that as parties, CNJ and Riffin had not participated substantially in those proceedings until they filed their first comments late in that proceeding, The Board agreed with NS and permitted the replies to be accepted., even though such replies were not specifically permitted in the procedural schedule set by the Board in that proceeding.

The offerors ask for nothing more than the same equal treatment here. NJ Transit has not to date materially participated in this proceeding. The Offerors would like the opportunity to respond to those comments before the Board renders a decision in this proceeding. Furthermore, no party will be materially harmed by this short delay. Since the Offerors are not asking for the full 20 days to respond, but rather just 7 days, this request cannot be considered unreasonable.

Conclusion

The Offerors request an extension of time until Wednesday, September 30th , 2009 to file its reply to NJ Transit's comments.

Eric S. Strohmeyer /s/

Eric S. Strohmeyer
Offeror

James Riffin /s/

James Riffin
Offeror

Dated: September 23rd, 2009

Certification of Service

I, Eric S. Strohmeyer, do certify, under penalty of perjury, that I served, via Email and Regular First Class Mail, a copy of the “Request for an Extension of Time” upon the following parties of record in this Proceeding.

Eric S. Strohmeyer /s/

Eric S. Strohmeyer