

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB DOCKET NO. AB-167 (Sub- No. 1190X)

227574

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NJ**

**RESPONSE TO
OCTOBER 9, 2009 VERIFIED STATEMENT OF JOHN K. FIORILLA**

1. Now come Eric Strohmeyer and James Riffin (“Offerors”) who herewith file this Response to October 9, 2009 Verified Statement of John K. Fiorilla in the above entitled proceeding.

2. The Offerors filed under seal a September 18, 2009 Verified Statement of Eric S. Strohmeyer, which set forth a portion of a conversation between Mr. Fiorilla and another party. Mr. Fiorilla stated in his Verified Statement that Mr. Strohmeyer’s rendition of the conversation was completely inaccurate.

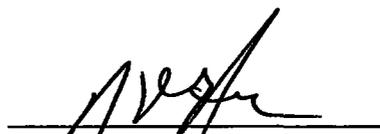
3. The issue before the Board is whether the line of railroad that is the subject of this proceeding, should be exempted from the Offer of Financial Assistance procedures on the grounds that the line is needed for an important public purpose, which public purpose is more important than preserving the line for continued rail service. The conversation that is the subject of Mr. Fiorilla’s Verified Statement, related to the issue of continued rail service. If the result of that conversation was crucial and pivotal to the issue of continued rail service, then the Offerors would feel compelled to pursue the issue of what was said during that conversation. However, since the Offerors have adduced additional evidence that the line is needed for continued rail service, and that the line is needed for a rail-related public use (The Tunnel Project), which additional evidence is more than sufficient to establish that the Line is needed for continued rail service, the Offerors elect not to pursue the issue of whether Mr. Strohmeyer’s characterization of Mr. Fiorilla’s conversation fairly represents what Mr. Fiorilla said. (While deposing the

participants in that conversation would resolve the issue, doing so would not tip the scale, since the Offerors have already presented more than sufficient evidence that the line is needed for continued rail service.)

4. For the reasons stated above, the Offerors will let the record on this issue remain as it is.

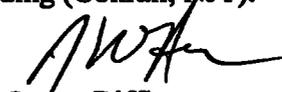
Respectfully submitted,


Eric S. Strohmeyer


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2009, a copy of the foregoing Response to October 9, 2009 Verified Statement of John K. Fiorilla was mailed via first class mail, postage prepaid, to the parties of record in this proceeding (Conrail, NJT).


James Riffin