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# FORTY PLUS FOUNDATION

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December 9, 2004

## FOUNDER

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## Re: Finance Docket No. 34606

Forty Plus Foundation / Manhattan Central Railway  
Systems, LLC, - FEEDER RAILROAD DEVELOPMENT APPLICATION -  
Portion of the Consolidated Rail Corporation's West 30<sup>TH</sup>  
Street Secondary Track in New York, NY [ie: Highline]

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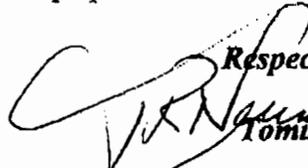
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is an original and ten (10) copies of the reply from FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC, [MCRS] to:

### PETITION OF THE CITY OF NEW YORK TO STRIKE NOTICE OF INTENT AND DISMISS THIS PROCEEDING

for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and returning it in the self addressed, stamped envelope provided.

*Respectfully submitted,*  
  
Tomislav R. Neuman,  
Executive Director  
FORTY PLUS FOUNDATION &  
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC

TRN/jm

Enclosures

cc: All Parties of Record



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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.



FINANCE DOCKET NO. 34606

REPLY OF:  
FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC  
IN OPPOSITION TO

PETITION OF THE CITY OF NEW YORK TO  
STRIKE NOTICE OF INTENT  
AND  
DISMISS THIS PROCEEDING

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FORTY PLUS FOUNDATION &  
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC  
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Dated: December 9, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.



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FINANCE DOCKET NO. 34606

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REPLY OF:  
FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC  
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PETITION OF THE CITY OF NEW YORK TO  
STRIKE NOTICE OF INTENT  
AND  
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The FORTY PLUS FOUNDATION (“40+”) and MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC (“MCRS”) hereby responds to THE CITY OF NEW YORK (“PETITIONER”) PETITION TO STRIKE NOTICE OF INTENT AND DISMISS THIS PROCEEDING filed in this proceeding on November 23, 2004.

MCRS respectfully requests that THE BOARD on behalf of the public convenience and necessity **deny** PETITIONER’S request to “*Strike Notice of Intent and Dismiss this Proceeding*”. RESPONDENT, MCRS contends that there is no basis for PETITIONER’S arguments, which rely on assumptions that are not only impetuous but also unsubstantiated. RESPONDENT is simply in the process of compiling sufficient evidence prior to filing a formal application before THE BOARD, therefore, not only are PETITIONER’S comments regarding MCRS’ filing of our “NOTICE OF INTENT TO FILE A FEEDERLINE APPLICATION” (“NOTICE”) premature, they are speculative and should not be addressed by THE BOARD at this time.

## INTRODUCTION AND SUMMARY

As THE BOARD is well aware, the *Highline Proceeding* has been on the docket for over 15 years. See *Chelsea Property Owners – Abon. – The Consol. R. Corp.*, 8 I.C.C. 2d 773, *aff'd sub nom. Consolidated R. Corp. v I.C.C.*, 29 F.3d 706 (D.C. Cir. 1994). This proceeding has been plagued by the incessant delays, misdirection, ceaseless legal choreography and false starts fashioned by PETITIONER, and now, the failure on PETITIONER's part to resolve "issues" solely within their control regarding a future for this Line.

This proceeding is now at a stage according to the most recent Notice filed by MCRS [*Finance Docket No. 34606*] (as a reverential courtesy to alert interested parties) to file a formal FEEDERLINE APPLICATION on behalf of the public convenience and necessity specifically designed to acquire and reactivate rail service on CONSOLIDATED RAIL CORPORATION'S West 30<sup>th</sup> Street Secondary Track in New York, NY -- commonly referred to as the "*Highline*".

PETITIONER has demonstrated a flawed sense of purpose over the past 15 years that unfortunately has not been on *behalf of the public convenience and necessity*. PETITIONER habitually remains the leading proponent and fervent sponsor for the demolition of this Line ever since inducing the ICC's original adverse abandonment ruling over 15 years ago.

Incidentally, PETITIONER has clearly known of MCRS' interests and historic efforts to acquire and reactivate the *Highline*, which predates PETITIONER's very recent *inclination* to pursue their defective demolition agenda -- now ineffectually masquerading as a "CITU". PETITIONER's desire for the abstraction of the Line has not changed only the method in which PETITIONER intends to execute the final abandonment *coup de grace* of this valuable and historic resource.

**FORTY PLUS (40+)** is a nationally renown and respected cornerstone charitable institution inaugurated in New York City on January 19<sup>th</sup> 1939; nationally lauded for our exceptional volunteer charitable mission by numerous US Presidents, Governors, and NYC elected officials -- 40+ has tirelessly worked to help our neighbors regain lost employment, self-confidence and integrity for over 65 years.

**FORTY PLUS**, as an authority in recognizing *discrimination* and *intimidation* in their many disguises' has effectively combated employment related discrimination in virtually every form -- has successfully championed and sponsored legislation designed to eliminate age, race, gender, religious and even "legally" condoned coercion and discrimination in the work place when our efforts were not a popular agenda to pursue on both a local and national level.

**FORTY PLUS** has learned over these decades that one does not obtain these results *by avoiding* local or national institutions or organizations that can provide support and effect change; it is disingenuous that *learned counsel* for PETITIONER would attempt to convince THE BOARD for one instant, that **FORTY PLUS** has not made every effort to work with PETITIONER in order to secure possession of this historic "*Life line of NYC*". For unexplainable reasons PETITIONER is withholding the fact that **FORTY PLUS** has on numerous occasions attempted contact only to be instructed in no uncertain terms, that PETITIONER had no jurisdiction over the Line and; "to only deal directly with the STB on the Highline".

As THE BOARD is aware, **FORTY PLUS**' filings are both publicly posted and delivered directly to PETITIONER'S attention, a fact of which PETITIONER has acknowledged in past filings -- therefore the lack of PETITIONER'S "*knowledge*" is baseless and PETITIONER is fully knowledgeable and premeditated that **FORTY PLUS** has been intentionally excluded from all of PETITIONER'S negotiations.

After exhaustive efforts to obtain information, audiences with City officials, also following prescribed protocols, etc. we have been sent on fools errands and run around in bureaucratic circles, we are not *naive* to PETITIONER'S "coded" cooperation in which their policy towards this respected charity has been "don't go away mad, just go away". In addition, PETITIONER claims that;

*"... its [MCRS] pleading creates the impression (baseless, but nonetheless present) that there is a plan afoot that would supplant the transactions under discussion."*

PETITIONER has been continually aware and appraised of MCRS' activities to institute our "*plan*" to acquire and reactivate rail service that in fact has a priority over PETITIONER'S convoluted CITU... PETITIONER now appears *anguished*, that on behalf of the public convenience and necessity, BOARD policy encourages feeder line applications and has a statutory duty to preserve and promote continued rail

service and to provide the public with a degree of protection against unnecessary discontinuance, cessation, interruption or obstruction of rail service. See e.g., Western Stock Show Association, supra, 2 S.T.B. at 131; Salt Lake, supra, slip op. at 6. Although impediments to State and local government projects are entitled to some weight, agency precedent clearly states that those interests are subordinate to its statutory duty to preserve and promote continued rail service where a carrier (MCRS) has expressed a desire to continue or establish operations and has taken reasonable steps to acquire traffic. *Chelsea Property Owners – Aban. – The Consol. R. Corp. supra. 8 I.C.C. 2d 773, 778-9 (1992).*

MCRS has clearly documented, on numerous occasions to PETITIONER'S attention, the fact that our proposal would, on behalf of the public convenience and necessity, categorically "supplant the transactions under discussion" and effectively reactivate this Line plus asks THE BOARD to further reinforce the shield that its plenary jurisdiction erects around the *Highline* to preserve and reactivate rail service. MCRS contends that this should be no revelation to PETITIONER; who, in feigning ignorance of these facts is both erroneous and calculatedly misleading.

## ARGUMENT

### I. PETITIONER HAS FAILED TO ESTABLISH A BASIS FOR THEIR FILING

PETITIONER alleges, in essence, that MCRS;

*"putative Notice is a pleading that finds no home in this Board's regulations."*

It appears evident by PETITIONER'S filing that they should be aware that 40+ filed a "NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION since each page not only obviously states that fact but in addition, not to confuse the uninformed, a header prominently positioned at the top of each page again clearly articulates "NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION", we remain baffled as to how PETITIONER may have failed to notice these obvious gesticulations -- by all standards it would be impossible to confuse our filing with any "suggestion" of an actual FEEDER RAILROAD DEVELOPMENT APPLICATION!

PETITIONER fails to document any Board "regulations" that prohibit the filing of "NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION's"; that is designed to assist RESPONDENT in the process of compiling sufficient evidence before filing a formal application before THE BOARD. Any reasonable person would find obvious that our filing is designed to alert parties of pending motions -- as was the clear objective of our "NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION". As PETITIONER should know there are no restrictions that prohibit our filing.

## II. COMPLETE INFORMATION IS NOT REQUIRED WITHIN A "NOTICE OF INTENT TO FILE"

PETITIONER alleges;

*"Forty Plus has filed a Notice of Intent in a format that suggests that it was preparing an application, but stopped short."*...

-- while simultaneously PETITIONER clearly identifies the heading "Notice of Intent" within their obtuse "*Argument*" (?) this is further proof that PETITIONER should be aware of the intent of RESPONDENTS' filings but chooses to ignore that fact.

As a "Notice of Intent to File" THE BOARD (or PETITIONER) has not been solicited to take any actions other than the fact that THE BOARD has now been alerted, in a timely fashion, to expect a pending formal application. Since a Notice requires no action on the part of THE BOARD, the degree of "completeness" of any particular "Notice of Intent" should obviously be left to the discretion of the author. It appears that PETITIONER wishes to impose their considerable intimidating authority upon RESPONDENT and further has the presumption to suggest that PETITIONER is the abettor as to the "completeness" of RESPONDENTS' "Notice of Intent to File", should we now also expect PETITIONER to dictate both *font and stationary color and texture*? PETITIONER further alludes to;

*"applicable regulations require the Board to reject an incomplete application..."*

-- again, RESPONDENTS' filing is not an application therefore no action is requested or required on the part of THE BOARD!

Further, on page #3 of PETITIONERS' motion -- curiously, PETITIONER feels strangely compelled to make an issue of what they refer to as "two shortcomings stand out";

- (1) The regulations require a "description of applicant's affiliation with any railroad" 49 C.F.R. §1151.3(a)(2)(iii). *Forty Plus* lists as its co-applicant the *Manhattan Central Railway Systems, LLC*, which is described "as a Class III Shortline railroad [that] is affiliated with **NY Cross Harbor Railroad, Inc. ("NYCH")."** (emphasis in original). However, in a letter filed in this proceeding on October 28, 2004 NYCH promptly disavowed any connection with or endorsement of this "application."

-- RESPONDENT contends that there is no basis for PETITIONER'S arguments, which again rely on unsubstantiated assumptions. PETITIONER once more fails to document any BOARD "regulations" that require identifying any affiliation with a railroad within the filing of "**NOTICE OF INTENT** TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION'S"; this "Notice" is designed to assist RESPONDENT in the process of compiling sufficient evidence before filing a formal application before THE BOARD. Again, RESPONDENTS' filing is simply a "**NOTICE if INTENT**" and not an application therefore no action is requested or required on the part of THE BOARD!

As clarification to the reference by PETITIONER to a *Oct. 28, 2004 NYCH "letter"*, the Board is aware; **NY Cross Harbor Railroad, Inc.** is presently the subject of an unprecedented *Adverse Abandonment* action (STB Docket No. AB-596, New York City Economic Development Corporation — Adverse Abandonment — New York Cross Harbor Railroad in Brooklyn, NY. ), filed on behalf of PETITIONER by the **NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (NYCEDC)** -- who has moved to evict NYCH's rail operations from property PETITIONER owns,

NYCH -- currently is in the "fight of its life" for its very existence with the NYEDC, who *coincidentally* is also supporting the PETITIONER'S proposal to demolish the *Highline* in order to facilitate a heavily lobbied Sports Stadium over the 30<sup>th</sup> Street Hudson rail yards. As NYCH subsequently to the filing of our "Notice of Intent" confided to RESPONDENT -- unfortunately at this time NYCH can not risk participating within our proposal since NYCH is presently engaged in very tenuous negotiations with the NYEDC for its very existence and greatly fears alienating PETITIONER.

It is unfortunate that the pressure created by the current *Adverse Abandonment* circumstances has forced NYCH from its initial cordial support into a position to distance itself from our proposal.

FORTY PLUS would never have jeopardized our reputation, and put our proposal and NYCH through this ordeal, if we had any doubt as to the authenticity of NYCH commitment to our project. FORTY PLUS greatly appreciated the kind generosity and all past unrestrictive support from NYCH management and wishes NYCH well in their future endeavors to secure all necessary lease sites presently under PETITIONER's jurisdiction.

Further, (page #3) of PETITIONERS' motion – identifies the 2<sup>nd</sup> contrived “*shortcoming*”;

- (2) *The regulations also require a showing that the “applicant” is a “financially responsible person.” 49 C.F.R. §1151.3(a)(3). Page 11 of the “Notice of Intent”, which contains the header “Financial Information About the Applicant”, is blank. The ensuing text discusses many issues but does not touch upon the financial standing of the “applicant” that has no railroad partner. There is much conjecture here about economics and feasibility and viability, but no showing that this crucial aspect of the Feeder Line regulations is satisfied.*

RESPONDENT contends that there is no basis for PETITIONER's arguments, which again rely on unsubstantiated assumptions. PETITIONER once more fails to document any BOARD “regulations” that require complete and documented information within the filing of “NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION's”; this “Notice” is designed to assist RESPONDENT in the process of compiling sufficient evidence before filing a formal application before THE BOARD.

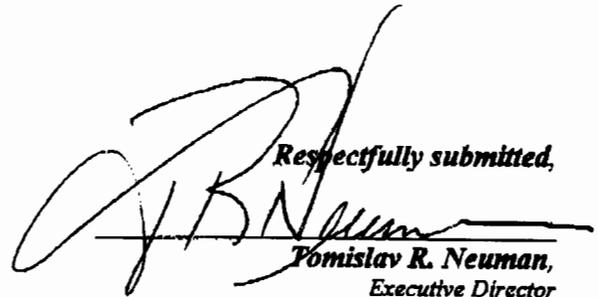
PETITIONER leaps to unsubstantiated conclusions and in this instance leaps too far and too fast, Upon review of the document PETITIONER refers to as “*shortcoming #2*” above -- apparently an innocent awry facsimile transmission inadvertently omitted the page providing “Financial information...” and nothing more sinister than that, we apology for any inconvenience this unanticipated omission may have caused.

## CONCLUSION

For all the foregoing reasons and based on the submission filed by PETITIONER in this action PETITIONER has failed to document any support to "Dismiss this Proceeding" based on PETITIONER'S faulty rational that a "Notice of Intent" is the equivalent of a formal application. Therefore logic would dictate that no action is required on the part of THE BOARD, other than to deny PETITIONER'S request.

WHEREFORE, Respondent respectfully requests this BOARD on behalf of the public convenience and necessity to deny PETITIONER'S request to "*Strike Notice of Intent and Dismiss this Proceeding*".

RESPONDENT, contends that there is no basis for PETITIONER'S arguments, which rely on unsubstantiated assumptions. RESPONDENT is simply in the process of compiling sufficient evidence prior to filing a formal application before THE BOARD, of which PETITIONER has failed to document any BOARD restrictions that prohibit RESPONDENTS from completing this objective and to file our pending completed FEEDERLINE APPLICATION.

*Respectfully submitted,*  


**Tomislav R. Neuman,**  
*Executive Director*  
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**Dated: December 9, 2004**