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GOVERNMENT RELATIONS

January 13, 2005

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings

JAN 13 2005

Part of  
Public Record



Re: Docket No. AB 167 (Sub-No. 1094)A; *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation’s West 30<sup>th</sup> Street Secondary Track in New York, NY*

Dear Sir:

I am enclosing an original and ten (10) copies of the Reply of the City of New York, NY, to Motion of Forty Plus Foundation/Manhattan Central Railway Systems, LLC to Dismiss the Joint Statement of the City of New York, et al., for filing in the above-referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5” diskette is enclosed with this document.

Sincerely,  
  
Charles A. Spitulnik

cc: Joseph H. Dettmar, Esquire  
All Parties of Record

213003

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



\_\_\_\_\_  
Docket No. AB 167 (Sub-No. 1094)A

**CHELSEA PROPERTY OWNERS -- ABANDONMENT -- PORTION OF THE  
CONSOLIDATED RAIL CORPORATION'S WEST 30<sup>TH</sup> STREET SECONDARY  
TRACK IN NEW YORK, NEW YORK**

ENTERED  
Office of Proceedings

JAN 13 2004

\_\_\_\_\_  
**REPLY OF  
THE CITY OF NEW YORK, NY, TO  
MOTION OF FORTY PLUS FOUNDATION/  
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC  
TO DISMISS THE JOINT STATEMENT OF THE CITY OF NEW YORK, ET AL.**

Part of  
Public Record

The City of New York, NY ("the City"), hereby submits this reply to the Motion of Forty Plus Foundation/Manhattan Central Railway Systems, LLC ("Forty Plus") to Dismiss the "Joint Statement" of the City of New York, et al. ("Forty Plus Motion").<sup>1</sup> The Motion asserts no basis for dismissing either the Joint Statement referred to in the title of the Motion, or the City's original request for a Certificate of Interim Trail Use ("CITU"). The Motion should be denied.

In the Forty Plus Motion, notwithstanding the meandering prose, accusations of discrimination and insinuation of misuse of political office on the part of City officials, four themes emerge that appear to be the bases upon which the Forty Plus Motion rests. None justifies dismissing or denying the CITU.

<sup>1</sup>In an order dated January 4, 2005 in this proceeding, the Board extended the date for filing this Reply to and including Thursday, January 13, 2005.

(1) Nothing about the City's and other interested parties' plans for development of the High Line justifies denial of the request of the City, now joined by the New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"), for a CITU. The City has addressed the questions about the impact of the plans for development of the area in and around the High Line, the possible re-routing of the High Line and the changes in the easement in the Reply of The City of New York, NY To (1) Motion of 511 West 23<sup>rd</sup> Street Associates LLC For Leave to Intervene and (2) Reply of 511 West 23<sup>rd</sup> Street Associates, LLC to CITU Request In Support of Adverse Abandonment Proceeding, filed in this proceeding on January 6, 2004 (the "*Reply to 511*"), as well as in earlier pleadings filed in this proceeding, and will only summarize those arguments here. In addition, the Friends of the High Line ("FOHL") have also addressed these same issues in its Statement Regarding Plans for the High Line, Status of Petition to Reopen, and Certain Arguments Relating to the Issuance of a CITU ("FOHL Statement"), also filed on January 6, 2004. The City incorporates the arguments from both pleadings here.

In the *Reply to 511* the City explains why:

- A change in the existing right-of-way, or a relocation of the easement if either occurs, would not invalidate the CITU (*id.* at 5-14; *see also* FOHL Statement at 10-12).
- The City, ESDC, the property owners' representatives, the Railroads and other affected parties have ensured throughout the course of all discussions about the future of the High Line, that restoration of service will be possible if necessary and appropriate (*id.* at 4-5 and Tab A); and
- A CITU is available in an adverse abandonment proceeding as in any other

abandonment proceeding (*id.* at 17-18. *See also* FOHL Statement January 6, 2004, at 7-10).

The arguments that Forty Plus puts forth in its Motion have no merit, for all of the reasons the City has articulated in the *Reply to 511* and other pleadings submitted in this proceeding.

(2) The Board should not dismiss the request for a CITU, or hold it in abeyance while it addresses the Feeder Line Application filed by Forty Plus in F.D. No. 34606. In a Reply to that application filed today, the City has noted the many evidentiary deficiencies in the Application and has asked the Board to reject it as incomplete pursuant to 49 C.F.R. §1151.2(b)(2). That Application can not form a basis for this Board to hold the CITU in abeyance because it has no substance.

(3) Forty Plus takes several opportunities to denigrate the judgment and ethics of the officials of the City, including the Speaker of the City Council. Each of Forty Plus's direct allegations and insinuations is without merit. City officials can be expected to entertain requests for time to discuss and consider developing projects when those projects have substance. The City can not be expected to delay plans and negotiations for complicated projects in order to accommodate the enthusiastic imaginations of every citizen or interest group that comes forward with an idea for a project. Forty Plus touts a plan that is without a modicum of substance and has not taken on any attributes of a concrete proposal in the intervening months since Forty Plus first alerted the City to its idea. In contrast, City officials and staff have already invested substantial resources and time into an alternative that satisfies a host of competing interests - - the railroads that own and have operated the High Line, the owners of virtually all of the properties encumbered by the easements that comprise the High Line right-of-way, the State of New York

(including the Metropolitan Transportation Authority) - - and complies fully with the legal requirements for a CITU. While Forty Plus has been able to come forward with a statement from the Morristown & Erie Railway of that company's willingness to work with Forty Plus and its putative railroad the Manhattan Central Railway Systems, LLC, and has described some new technology that will be used for the operations on the line if the Feeder Line Application is granted, the substance of its proposal ends there. The City can not be faulted legitimately for failing to expend scarce time and other resources to address a plan about which the best that can be said is "there's no there, there."

(4) Forty Plus's diatribe about the City's inattention to rail service in the City overlooks the reality of the time and attention the City has spent in the past 7 years on rail matters. Two matters on which the City agencies have spent enormous time and resources bear emphasis.

The City's actions in the proceeding in which CSX Transportation, Inc. (and its affiliates) and Norfolk Southern Corporation (and its affiliates) acquired the stock and assets of Consolidated Rail Corporation ("Conrail") ensured the availability of direct competitive rail service for shippers on the east side of the Hudson River in a case where the transaction's proponents had sought to provide for such competition only on the New Jersey side of the River. *See CSX Corp., et al. - - Control and Operating Leases/Agreements - - Conrail, Inc.*, 3 S.T.B. 196, 388-389 para. 28 (1998). The Forty Plus discussion of the situation on Staten Island overlooks the recent flood of activity with respect to the reactivation of rail operations on the line there. *See STB F. D. No. 34429, The New York City Econ. Dev. Corp. - - Petition for Declaratory Order, slip op.*, Decision (Service Date July 15, 2004) (concluding that the City may begin construction of spur and switching tracks and begin rehabilitation of the rail lines it owns on the

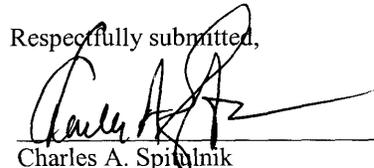
island without prior approval of this Board; and referring to construction activities to be undertaken by the Port Authority of New York and New Jersey to improve the connection of the SIRR lines to the Conrail "Chemical Coast Line").

**CONCLUSION**

In short, the arguments raised in the Forty Plus Motion to Strike are totally without substance and should not be allowed to prevent the City and its partners from proceeding with the plans associated with the CITU that the City and ESDC seek.

WHEREFORE, and in view of all of the foregoing, and of the arguments presented in the pleadings incorporated herein by reference, the City respectfully requests the Board to deny the Forty Plus Motion to Dismiss and proceed forthwith to issue a CITU herein.

Respectfully submitted,



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Counsel for the City of New York, NY

Dated: January 13, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of January, 2005, a copy of the foregoing REPLY OF THE CITY OF NEW YORK, NY TO MOTION OF FORTY PLUS FOUNDATION/ MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC TO DISMISS THE JOINT STATEMENT OF THE CITY OF NEW YORK, ET AL. was served by first class mail, postage prepaid, upon:

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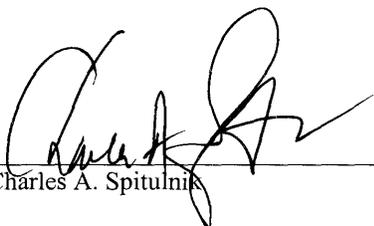
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