

LAW OFFICE

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD  
WAYNE R. WATKINSON  
MARC E. MILLER  
RICHARD T. ROSSIER  
CHARLES A. SPITULNIK  
RICHARD PASCO  
ALEX MENENDEZ  
AMY B. JONES  
CHRISTOPHER J. SALISBURY\*  
(\*Admitted in Maryland only)

ONE MASSACHUSETTS AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20001-1401  
(202) 842-2345  
TELECOPY (202) 408-7763

BILL HAWKS  
SENIOR POLICY ADVISOR

ROBERT RANDALL GREEN  
LAURA L. PHELPS  
DAVID R. GRAVES  
GOVERNMENT RELATIONS

KATHRYN A. KLEIMAN\*\*  
OF COUNSEL  
(\*\*Admitted in Virginia only)

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Public Record

February 3, 2006

215738



Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: *New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp. – Transaction Within A Corporate Family Exemption*  
Finance Docket No. 34813

Dear Sir:

I am enclosing an original and ten (10) copies of the Motion of New York City Economic Development Corporation to Hold Proceeding in Abeyance in the above referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5 inch diskette is enclosed with this document.

If you should have any questions, please feel free to call.

Sincerely,

*Charles A. Spitulnik*  
Charles A. Spitulnik

ENTERED  
Office of Proceedings

FEB 3 2006

Part of  
Public Record

Enclosure

215738



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 34813  
NEW YORK NEW JERSEY RAIL LLC AND NEW YORK CROSS HARBOR  
RAILROAD TERMINAL CORP. -- TRANSACTION WITHIN A CORPORATE  
FAMILY EXEMPTION**

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**MOTION OF  
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
TO HOLD PROCEEDING IN ABEYANCE**

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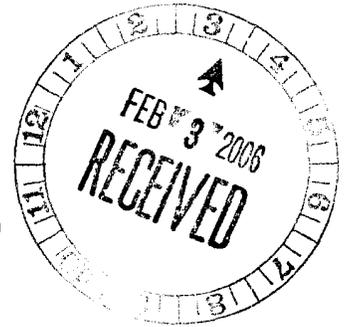
**CHARLES A. SPITULNIK  
ALEX MENENDEZ  
McLeod, Watkinson & Miller  
One Massachusetts Avenue, N.W.  
Suite 800  
Washington, DC 20001  
(202) 842-2345**

**Counsel for the New York City Economic  
Development Corporation, acting on behalf  
of the City of New York, NY**

Dated: February 3, 2006

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 34813  
NEW YORK NEW JERSEY RAIL LLC AND NEW YORK CROSS HARBOR  
RAILROAD TERMINAL CORP. - - TRANSACTION WITHIN A CORPORATE  
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**MOTION OF  
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
TO HOLD PROCEEDING IN ABEYANCE**

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New York City Economic Development Corporation (“EDC”), acting in its capacity as contractor to the City of New York, NY with responsibility for managing properties that are involved in this proceeding, hereby moves this Board to hold this proceeding in abeyance. EDC respectfully requests that the abeyance period continue until it is confirmed that implementation of the transactions described in the Verified Notice of Exemption (“Notice of Exemption”) filed by New York New Jersey Rail LLC (“NYNJ”) and New York Cross Harbor Railroad Terminal Corp. (“NYCH”) (collectively, Petitioners) will not alter, modify or otherwise compromise the City’s rights pursuant to a Permit dated as of September 1, 1984 issued by the City of New York (“City Permit”) that relates to property described in the City Permit as The Bush Terminal Yards (*aka* “First Avenue Yards”) and the Floatbridge Facility and related tracks at the Harborside Industrial Center (*aka* “Brooklyn Army Terminal”).

In support hereof EDC states as follows:

## ARGUMENT

On December 22, 2005, Petitioners filed the Notice of Exemption under 49 CFR 1180.2(d)(3). Under the proposed transaction, NYCH would transfer to NYNJ all or substantially all of its railroad assets and intangible assets required for railroad operation. NYNJ would assume all of NYCH's rights and obligations to provide service as a common carrier.

On December 28, 2005, Consolidated Rail Corporation ("Conrail") requested that the Board stay the effectiveness of the Notice of Exemption. Conrail expressed its concerns about the effect of the transactions described in the Notice of Exemption on NYCH's contractual obligations to Conrail under a lease agreement between Conrail and NYCH ("Conrail Lease"), and other contractual arrangements as well. Also on December 28, 2005, EDC filed a letter ("EDC Letter") with the Board that it had served on counsel for NYCH seeking to ensure that the City's rights pursuant to the City Permit were not compromised, altered or otherwise modified by the Notice of Exemption.

That letter clearly articulated that pursuant to the applicable law, facts and City Permit that if "NYCH has any right to be on that property at this time, it is solely as a month-to-month permittee." *See EDC Letter* at p. 1.

Further, it confirmed that:

...such Permit may not be assigned without an acknowledgement from the assignee (the "Assignee") that (i) the Assignee is an affiliate of the current permittee, NYCH (the "Assignor"); (ii) that by operation of law and by its agreement the Assignee acknowledges that it assumes and is subject to all obligations under the Permit, and any other liabilities of the Assignor accruing under the permit prior to the date of transfer, including, but not limited to, liabilities for accrued and unpaid taxes and assessments and liabilities arising from environmental and other matters; and (iii) that the Assignee completes and submits to the City of New York satisfactory VENDEX background investigation questionnaires for the Assignee and its principals.

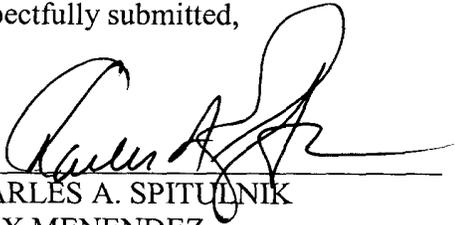
*See EDC Letter* at p. 1. Thereafter, on December 30, 2005, NYNJ indicated that it recognized that it was required to comply with the contractual obligations in the Conrail Lease. On January 3, 2006, Conrail filed a response, stating that a stay of 30 days would afford Conrail an opportunity to evaluate the proposed transaction in order to determine whether to consent to the assignment of the Conrail Lease. On January 5, 2006, Petitioners filed a motion to hold the Notice of Exemption in abeyance and in a decision dated January 10, 2006 the Board agreed to hold the proceeding in abeyance.

EDC, like Conrail, is seeking to ensure that the City's rights are fully complied with and are not compromised, modified or altered in any way by the proposed transactions. EDC is seeking to hold these proceedings in abeyance until it can confirm that the implementation of the proposed transactions will not impair any of the City's rights as described in the EDC Letter. EDC is filing this motion because, even though NYCH and NYNJ have indicated that they will attempt to resolve Conrail's issues, and may even be able to do so, they have made no move to comply with the requirements of the City Permit and applicable law. Even if Conrail and Petitioners are able to resolve their issues, EDC submits that the period of abeyance should continue until EDC determines that the City's rights under the City Permit are preserved.

WHEREFORE, New York City Economic Development Corporation respectfully requests that this Board hold this proceeding in abeyance until it is confirmed that the transactions contemplated in the Notice of Exemption filed by New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp. will not alter, modify or otherwise compromise the rights of the City of New York.

Dated: February 3, 2006

Respectfully submitted,

By:   
CHARLES A. SPITULNIK  
ALEX MENENDEZ  
McLeod, Watkinson & Miller  
One Massachusetts Avenue, N.W.  
Suite 800  
Washington, D.C. 20001  
Tel. (202) 842-2345  
Fax (202) 408-7763  
Email. [cspitulnik@mwmlaw.com](mailto:cspitulnik@mwmlaw.com)

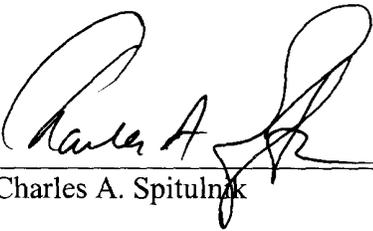
Counsel for New York City Economic  
Development Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of February, 2006, a copy of the foregoing MOTION OF THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION TO HOLD PROCEEDING IN ABEYANCE was served by first class mail, postage prepaid, upon:

John D. Heffner, Esquire  
1920 N Street, N.W., Suite 800  
Washington, DC 20036

Jonathan M. Broder, Esquire  
Vice President – Law and General Counsel  
Consolidated Rail Corporation  
2001 Market Street, 29<sup>th</sup> Floor  
Philadelphia, PA 19103



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Charles A. Spitulnik