

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34975

MARYLAND TRANSIT ADMINISTRATION

Petition for a Declaratory Order

**REPLY OF CNJ RAIL CORPORATION
AND
MOTION TO FOR LEAVE TO LATE FILE**

Dated: January 11, 2007

**CNJ Rail Corporation
833 Carnoustie Drive
Bridgewater, NJ 08807
(908) 361-2435**

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34975

MARYLAND TRANSIT ADMINISTRATION

Petition for Declaratory Order

Notice of intent to participate

And

Motion for leave to file reply late.

1. CNJ Rail Corporation, a New Jersey corporation, hereby serves notice of its intent to participate as a party of record in the above captioned proceeding.
2. A copy of all filings and other correspondence concerning this proceeding should be served upon CNJ Rail at 833 Carnoustie Drive, Bridgewater, NJ 08807 and sent to the attention of Eric S. Strohmeyer, Vice President and COO.
3. In past proceedings before the Board, CNJ Rail has either had counsel, or one of its officers, file comments or petitions, in those proceedings the corporation has had an interest in. The decision to retain counsel is based upon the level of interest CNJ Rail has in a particular proceeding and to the degree in which CNJ Rail wishes to participate.
4. Should the Board grant petitioner's request and commence a declaratory order proceeding, and if the Board accepts Riffin's arguments that discovery is appropriate in this proceeding, then CNJ Rail **will retain counsel** to represent the corporation in this proceeding.
5. CNJ Rail has an interest in the outcome of this case.

6. CNJ Rail, at this moment, requests that the board commence an evidentiary proceeding in this matter and establish a procedural schedule in this case.
7. CNJ Rail has recently become aware of issues that it was not previously aware of and as such, wishes to retain counsel to represent the corporation in this proceeding.
8. The matter presented by this filing may have significant impact on other cases now before the board in which CNJ Rail is a participant. In addition, the issues that will be presented in this case are significant in scope because of the possibility that the Board's procedures, as well as the Commission's procedures, may have been violated.
9. CNJ Rail was prepared to file its reply today in this proceeding. Two days ago, CNJ Rail came to be aware of additional information that would lead us to believe that this case is far more complicated than originally thought.
10. CNJ Rail learned that the Maryland Transit Administration (MTA) removed track material north of Milepost 13.8 along the line after 1990 and subsequently moved to another MTA controlled line. While CNJ was previously aware that some track material was removed, CNJ just became aware of where it went and how it was disposed of.
11. This action might very well have jeopardized the MTA position that it did not acquire the common carrier obligations associated with the line. To the extent that CNJ Rail will now likely wish to facilitate discovery of its own, CNJ Rail has decided to retain counsel, should the Board feel that an evidentiary proceeding is appropriate.
12. CNJ Rail yesterday reached out for outside counsel and expects to execute a retainer agreement by close of business tomorrow. CNJ Rail expects that it will take no longer than a week to prepare its response.
13. Since it took the MTA nearly 17 years to finally ask for a jurisdictional review of the 1990 transaction, CNJ Rail would respectfully ask that it be granted a one-week extension to file its response. CNJ Rail feels that the MTA will not be adversely affected by a one-week extension.
14. In addition, the undersigned reached out this afternoon to counsel for the MTA to seeking his client's consent to the request for an extension. Counsel for the MTA immediately returned the undersigns phone call and informed the undersigned that he would pass along CNJ's request to his client, but that given the late hour of the day, he might not able to secure his clients permission to agree to the extension before CNJ Rail needed to file this request.

15. As such, CNJ is filing this request with the Board without the consent of opposing counsel. CNJ Rail does not know whether or not the MTA will object to this request at this time.
16. For the above-mentioned reason, CNJ respectfully requests that the board grant our motion for leave to file our reply late and set a date for our comments to be due by.
17. In addition, CNJ Rail respectfully requests that the Board commence an evidentiary proceeding in this matter and set forth a procedural schedule in order to facilitate discovery and allow the Board to make a determination based on a more complete and accurate record.

Executed on Behalf of CNJ Rail Corporation,

Respectfully submitted,

/s/ Eric S. Strohmeyer

Eric S. Strohmeyer
Vice President, COO
CNJ Rail Corporation

Certification of service

The undersign hereby certifies that a copy of the above document was served upon counsel for the MTA via fax in the above captioned proceeding.

/s/ Eric S. Strohmeyer