

224499

CNJ Rail Corporation
833 Carnoustie Drive, Bridgewater, NJ 08807
Phone: (908) 361 - 2435 Email. CNJRail@yahoo.com

February 9, 2009

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D C 20423-0001

Re: Consolidated Rail Corporation - Abandonment Exemption - In Hudson County, NJ
Docket # AB 167 (Sub 1190) X

Dear Acting Secretary Quinlan

CNJ Rail Corporation as come to learn that on, or about, February 6, 2009, your office received a letter from Mr. John K. Enright, general counsel for Conrail, regarding the above captioned proceeding. In that letter, Conrail requests that the Board terminate the OFA process currently underway in this proceeding because an OFA was not filed by February 5, 2009. Conrail states in its letter that they believed they complied with all the provisions of 49 CFR 1152.27(a)(1)(ii) because of a letter written to the undersigned on January 22, 2009¹.

CNJ respectfully disagrees with Conrail's assertion that the letter of January 22, 2009 met the criteria of 49 CFR 1152.27(a)(1)(ii) for the reason set forth below.

CNJ would like to bring to the Board's attention the plain, simple language of Conrail's letter of January 22. On page one, paragraph two, Conrail states:

"Conrail only holds any significant title to a portion of the Line (between Chapel and Linden Avenues in Jersey City) *but there is a small parcel at Communipaw Avenue as well,*" (emphasis added)

Conrail then goes on to state that the minimum purchase price

¹On January 23, 2009, CNJ received a letter from Conrail whose cover sheet was dated January 22, 2008. CNJ assumed that the date may have been an inadvertent typo. Page two of the same letter appears to be dated correctly for the January 22, 2009. CNJ reserves the right to challenge the date letter was actually produced.

“ only applies to the Chapel - Linden portion. ” (emphasis added)

CNJ respectfully directs the Board’s attention to our Notice of Intent to File an OFA, filed on December 19, 2008. In that filing, CNJ clearly requested information for the *entirety* of the line. CNJ does intend to put forth an OFA² for a segment less than the entirety of the Line. CNJ did however, ask for the information for *all of the line* so that we can complete our due diligence and select the segment which we believe can be reasonably, and economically, restored to service.

While CNJ is grateful to Conrail for telling us what they believe the Chapel - Linden portion of the line is worth, we are very much at a loss as to what the minimum purchase price is for the rest of the line in question. While CNJ understands Conrail’s reluctance to put a price on portions of the line they claim they no longer own, CNJ is baffled by Conrail’s omission of a minimum purchase price for a segment they still do claim ownership of (The segment near Communipaw Avenue).

In addition, at the meeting Conrail had with the undersigned on January 28, 2009, Conrail’s outside counsel indicated to the undersigned Conrail’s belief that a permanent, irrevocable easement, or constructive easement, or even an implied easement may have significant value, under certain circumstances, if the easement does not automatically terminate upon a carrier’s abandonment of rail service for which the easement was used. Such an easement could be deemed a property right *greater* than a reversionary interest in a particular parcel and, as such, could have value. Conrail’s letter of January 22 does not even remotely suggest what Conrail would deem such a value to be.

CNJ realizes that it will soon have to file a motion to compel in this proceeding. As the Board is aware, the undersigned is scheduled to give testimony on February 11, 2009 before the Board in STB Ex Parte 683 - Passenger Rail Investment and Improvement Act of 2008. I will obviously be traveling and will be unable to produce the required motion until the week of the February 15 at the earliest.

CNJ respectfully asks that the Board take no action at this time until CNJ files its motion to compel next week. In addition, CNJ would like the Board to have a copy of the document Conrail produced for the meeting between Conrail’s representatives and the undersigned on January 28, 2009. That document will greatly help the Board in determining the best course of

²CNJ does *not* intend to include in its OFA any section, or portion, of the line that has been previously sold to New Jersey Transit for their Light Rail maintenance facilities or commuter parking lots. However, CNJ has not yet ruled out buying the right of way up to the industrial park immediately *adjacent* to NJT’s facilities. Further due diligence is currently being performed.

action for the remainder of this proceeding

Should you have any further questions, please feel free to call me at the phone number provided herein

Thank you for your assistance

Submitted on behalf of CNJ Rail Corporation

Sincerely,

Eric S. Strohmeyer /s/

Eric S Strohmeyer
Vice President, COO
CNJ Rail Corporation
(908) 361 - 2435

CC John K Enright, Esq - Consolidated Rail Corporation