

**Before the  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35348**

**CSX TRANSPORTATION, INC. AND  
DELAWARE AND HUDSON RAILWAY COMPANY, INC. --  
JOINT USE AGREEMENT**

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**COMMENTS OF  
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

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should be addressed to:

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Dated: July 2, 2010

**Before the  
SURFACE TRANSPORTATION BOARD**

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New York City Economic Development Corporation (“EDC”) hereby submits its comments with respect to the application submitted by CSX Transportation, Inc. (“CSXT”) and Delaware and Hudson Railway Company, Inc. (“D&H”) (collectively, “Applicants”) for approval of the New York Joint Use Agreement dated December 1, 2009 (the “Agreement”). EDC supports the approval of the proposed arrangement.<sup>1</sup>

EDC is a local development corporation controlled by the City of New York (the “City”). It is charged with responsibility for performing economic development services on behalf of the City, including (without limitation) facilitating rail freight and intermodal transportation development projects throughout the City, and encouraging development of intrastate, interstate, and international commerce and trade in the City. It is subject to the direction and control of the Office of the Mayor.

EDC and the City of New York sought and avidly supported the trackage rights D&H received as a condition of this Board’s approval of the acquisition by CSXT and Norfolk

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<sup>1</sup> Notwithstanding EDC’s willingness to support this transaction at this time, EDC reserves the right to comment further in the event that (a) the New York & Atlantic Railway submits additional comments as a result of the provision by Applicants of more information in response to NY&A’s Motion to Compel; or (b) this Board approves

Southern Railway Company of the assets of Consolidated Rail Corporation (“Conrail”). See *CSX Corp.—Control and Operating Leases/Agreements—Conrail Inc.*, 3 S.T.B. 196, 282-83 (1998). EDC’s goal in that proceeding was to ensure that shippers who relied on the east-of-the Hudson line for direct rail service had the benefit of direct intramodal competition for that service. EDC now supports the proposal here because it appears to provide for enhanced competition on that line.

As described in the attached Verified Statement of Frank Harder (“V.S. Harder”), the Applicants have crafted an arrangement that will apparently reduce D&H’s costs of serving the New York City market on the east-of-Hudson line. As a result, the proposed arrangement if approved can be expected to increase the likelihood that shippers in that market will benefit. The Applicants have created an arrangement that requires D&H to surrender some control of the movement of traffic in its name to and from the City. The loss of that control is offset by the reduced operating expense that allows it to become a more effective competitor.

However, the new agreement also specifically contemplates preservation of the rights and operating obligations to which CSXT and D&H agreed following the *Conrail Transaction* approval. That is, D&H has retained the right to reinstate the operation of its own trains on this corridor. As a result, CSXT appears to have every incentive for the Albany – Fresh Pond piece of the proposed transaction to succeed. Because of the benefits it receives from the aspects of the arrangement that address the Albany – Rouses Point traffic, it appears that CSXT will have no incentive to place its ability to realize those benefits at risk by putting D&H in a position where it will seek to cancel this agreement and reinstate operations under the current arrangement.

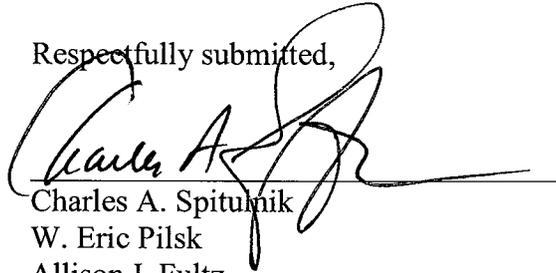
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the modifications to the Protective Order that will permit EDC in-house personnel to review Highly Confidential information provided by Applicants in response to EDC’s discovery submitted in this proceeding.

Because this transaction will, if all of its benefits are realized, result in improved transportation alternatives for the shipping public in the City of New York, EDC supports the proposed transaction.

Dated: July 2, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

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**EXHIBIT 1**

**Highly Confidential  
Verified Statement of  
Frank R. Harder**

**[Exhibit not attached to Public Version]**

## CERTIFICATE OF SERVICE

I hereby certify that I have this 2<sup>nd</sup> day of July, 2010, caused to be served the Highly Confidential version of the Comments of New York City Economic Development Corporation upon counsel for Applicants as follows:

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