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October 5, 2020

VIA E-FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: *Consolidated Rail Corp. – Abandonment Exemption –
in Hudson County, NJ, AB 167 (Sub-No. 1189X)*

Dear Ms. Brown:

The LLCs¹ hereby reply in opposition to the motion of the City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy (“City et al”) filed on September 30, 2020 (“Motion”).

Through its Motion, City et al request that the Surface Transportation Board (“Board”) extend the time that the Office of Environmental Analysis (“OEA”) provided for public comments on the Draft Supplemental Environmental Assessment (“DSEA”) issued on September 20, 2020 from October 19, 2020 until an undetermined date “thirty (30) days following the issuance of a final ‘Memorandum of Agreement’ for purposes of Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108.” The City appears to justify its request on the basis that it will not have the opportunity to adequately address certain alleged “grievous adverse impacts” of line abandonment affecting historic assets unless the OEA indefinitely delays the filing and consideration of the City et al’s comments on the DSEA until the completion of a final Memorandum of Agreement (“MOA”) that may be reached under Section 106.²

¹ The LLCs consist of 212 Marin Boulevard, LLC.; 247 Manila Avenue; LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC.

² In footnote 5 of its Motion, and elsewhere, counsel for City et al makes a number of inflammatory, highly misleading, and inaccurate statements and accusations against other parties and the even the OEA, whom it claims, through the issuance of the DSEA, is somehow attempting to enable the “rubberstamp[ing]” of line abandonment. Counsel also casts aspersions on the “good faith” intentions of other parties. In addition to being

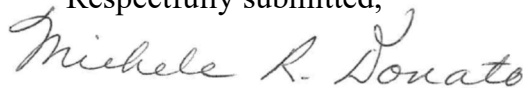
The LLC's object to the Motion which is improperly brought and unwarranted, and request that it be dismissed or denied. First, the Motion is improperly directed to the Board, and not OEA, to whom the Board has delegated responsibility for directing the environmental review process, including establishing deadlines. 49 C.F.R. § 1105 et seq. Second, even if the Board decided to address the merits of the Motion, the request should be denied because it seeks an extension of indefinite duration, premised on the issuance of a final MOA reached under Section 106 at some undetermined time. Such a request for an extension of indefinite duration is unreasonable and will interfere with and unnecessarily delay OEA's orderly review. Also, while the LLC's are very hopeful and strongly desire to work in cooperation with OEA and other consulting parties, including the Cities et al in reaching final resolution of Section 106 through a MOA, MOA's are not required under Section 106, and it is possible that a final MOA may never be reached. It is inappropriate to seek to delay the due date for comments to a future action that might not ever occur.

Third, the Motion improperly conflates the Section 106 and National Environmental Policy Act ("NEPA") review processes, which while related, are separate and distinct. The OEA often closes environmental review and proceeds to consider a MOA. There will be a 30-day comment on the MOA that may be extended if needed in the future, thus making this motion unnecessary.

In reality, the Motion appears to be a thinly veiled initiative to disrupt the OEA's orderly and timely consideration of the environmental and historical impacts of line abandonment. OEA is thoroughly and appropriately carrying out its responsibilities. The LLC's are confident that once OEA completes its Section 106 and NEPA review in accordance with all governing requirements, the Board will consider in full OEA's review of the effects of the proposed line abandonment on the environment and historic resources, and any recommended mitigation, in reaching a final decision in full accordance with governing law.

For the forgoing reasons, the LLC's respectfully request that the Board dismiss the Motion or reject it.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michele R. Donato".

Michele R. Donato

objectionable under the Board's rules governing the duty of practitioners (49 C.F.R. § 1103.10 et seq.), its substantive comments on the DSEA, and on several extraneous matters unrelated to the extension request apparently with the intent to influence the Board, are highly prejudicial and improper and should be disregarded.

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of October, 2020 caused a copy of the foregoing filing to be served by U.S. Mail, postage prepaid or by more expedited means upon all parties of record.


Michele R. Donato