

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corp. –	)	309251
Abandonment Exemption –	) AB 167 (Sub-no. 1189X)	ENTERED
In Hudson County, NJ	)	Office of Proceedings February 20, 2025 Part of Public Record

and related cases AB 55 (Sub-no. 686X) and AB 290 (Sub-no. 306X)

RESPONSE BY
CITY OF JERSEY CITY
TO THE BOARD’S FEBRUARY 10, 2025 DECISION

On February 10, 2025, this Board issued a decision ordering Consolidated Rail Corporation (“Conrail”) to certify the continued accuracy of the valuation information provided in its June 1, 2015 filing in AB 167 (Sub-no. 1189X) or inform the Board that it will provide updated valuation information. The Board’s February 10 decision also required City of Jersey City and CNJ Railroad to state if they continued to intend to employ offer of financial assistance (“OFA”) procedures.

On February 18, Conrail advised it “will provide updated valuation information.”

In response to the February 10 decision and Conrail's February 18 filing, City of Jersey City ("City") advises as follows:

Intent to OFA. Conrail dropped out of any meaningful settlement discussions some years ago. City continues to seek to acquire the rail corridor in question. City accordingly continues to reserve all remedies against Conrail. The City previously filed a timely notice of intent to file an Offer of Financial Assistance ("OFA") to purchase. The City has not withdrawn that notice. The City continues to reserve its OFA purchase remedy. Based on information to date, the City intends to file an OFA to purchase all Conrail property encompassed in the Harsimus Branch including pre-existing and appropriate aerial crossings over the National Docks Secondary and otherwise necessary or prudent for the City's rail purposes. This may encompass unused Conrail trackage up to or crossing Newark Avenue south of Bergen Arches.

Information request. City is entitled under 49 C.F.R. 1152.27, upon bona fide request, to be provided with information and documents in Conrail's possession bearing on any Conrail OFA updated valuation germane to calculating the Net Liquidation Value (NLV) of the potential OFA property. Pursuant to section 1152.27(c)&(d), and other applicable authority, City accordingly hereby requests Conrail to supply City, no later than the date on which it submits its updated valuation, all such information and documents, including but not necessarily

limited to copies of all title reports, records of sales or offers, appraisals, other valuations, reports relating to soil toxicity, and track and tie (and any other material) valuations.

Schedule. Once Conrail provides its final updated valuation and completes the information disclosure described in the prior paragraph, the City requests no less than 45 days before any OFA is due. City reserves the right to modify its scheduling requests depending on actions or inactions by Conrail. The City further reserves all rights in connection with the Board's unilateral action in permitting Conrail to update its valuation.

Conclusion. While conducted nominally under the Board's two-year out-of-service abandonment regulations,¹ this proceeding has been protracted for it involves an effort by Conrail to profit from an unlawful de facto abandonment in which the railroad purported to sell off, without seeking required authority from STB either to transfer or to abandon the line, a significant portion of the Harsimus Branch for non-rail purposes, without any reservation of any rail easement or other rail interest. The Conrail de facto abandonment was in the face of City expressions of interest to acquire the property for public use, including specific inquiries to Conrail (and to STB) for proof that the line had been authorized for abandonment,

¹ 49 C.F.R. 1152.50, City objected to those as inappropriate in the circumstances.

or was not otherwise subject to STB abandonment jurisdiction. The City maintains that STB, in order to enforce its jurisdiction, should and must afford meaningful relief.² The City reserves all rights, and waives no requests for relief tendered to date.

² The controversial nature of this proceeding was recently attested by then STB Chairman Primus. In his speech to Midwest Association of Rail Shippers 2025 Winter Meeting on January 16, 2025, then Chairman Primus stated that STB in 2024 managed to “close out some difficult and substantial proceedings. Among them was an abandonment proceeding, involving Conrail and its Harsimus branch line that, due to a long and drawn-out litigation effort, lasted more than 15 years. For those who are counting, that was six chairmen ago.”

The “litigation effort” arose due to Conrail’s unlawful de facto abandonment and sale. Pursuant to a declaratory proceeding brought by the City and allies, STB determined the Harsimus Branch was a line of railroad requiring abandonment authorization. The LLCs (to whom Conrail unlawfully had sold the property precipitating the declaratory proceeding) and Conrail then claimed that STB lacked jurisdiction over the Harsimus Branch because it was not a “line.” (It was *inter alia* a former freight main line of the Pennsylvania Railroad and its successor and conveyed to Conrail as a “line.”) The LLCs and Conrail appealed. This resulted in several more rounds of litigation, toward the end of which the LLCs renounced the claim the property was not a line, and Conrail declined to defend that position any longer as well. The LLCs (in some cases supported by Conrail) also filed numerous other proceedings before this agency, and/or in state or federal courts.

City does not view the proceeding as “closed out.” The deeds embodying the unlawful de facto abandonment should be voided to give meaning to STB jurisdiction. Only then can environmental review be appropriately conducted and only then may the City (and members of the public) be afforded the meaningful relief to which the City and the public are otherwise lawfully entitled. In all events, the OFA remedy has yet to be resolved. City reserves all rights, including rights to petition for judicial review.

Respectfully submitted,

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Due: 20 February 2025

Certificate of Service

I hereby certify service by email attachment or by placement in the US Mail, postage pre-paid first class to all persons/parties identified on the STB's docket list in this docket and the related dockets on 20 Feb. 2025.

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