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SERVICE DATE – MAY 23, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON
COUNTY, N.J.

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, N.J.

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, N.J.

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: May 23, 2025

These proceedings involve a request from Consolidated Rail Corporation (Conrail) for authority to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in the City of Jersey City, N.J. The Harsimus Branch has not been used for rail service in decades.¹ On February 26, 2009, Conrail, CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) jointly filed a verified notice of exemption under 49 C.F.R. part 1152, Subpart F—Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NSR to discontinue service over, the Harsimus Branch. Notice of the exemptions was served and published in the Federal Register on March 18, 2009 (74 Fed. Reg. 11,631). The exemptions were scheduled to become effective April 17, 2009.

Pursuant to the notice of exemption, the deadline for submitting formal notices of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2) was March 30, 2009.² As relevant here, the

¹ Collectively, the dockets are referred to as the Harsimus Abandonment Proceeding. A previous Board decision provides a full history of the Harsimus Branch. Harsimus Aban. Proc., AB 167 (Sub-No. 1189X) et al., slip op. at 2-6 (STB served Aug. 11, 2014).

² As stated in prior decisions in these dockets, the OFA process here is governed by the OFA regulations in effect when this proceeding began in 2009.

Board received notices of intent from the City of Jersey City (the City) and CNJ Rail Corporation (CNJ) on March 27, 2009. On April 16, 2009, the Board stayed the effectiveness of the exemptions while the environmental and historic review process proceeded. On May 26, 2009, the Board directed Conrail to provide the information necessary to formulate an OFA and tolled the time period for the City and CNJ to file an OFA until 10 days after Conrail provided the City and CNJ with the information specified in 49 C.F.R. § 1152.27(a) and notified the Board that it had done so.

By a decision served April 20, 2010, the Board held all aspects of the proceeding in abeyance while the United States District Court for the District of Columbia, acting as the Special Court, addressed a question regarding the nature of the trackage sought to be abandoned. On August 11, 2014, after the courts found that the Harsimus Branch is a line of rail subject to the Board's abandonment authority, the Board vacated the abeyance order, reinstituted the proceeding, and stated that it would proceed with the historic and environmental review process.

Subsequently, on December 23, 2014, several parties (including the City) filed a motion seeking a Board order compelling Conrail to produce valuation information for the Harsimus Branch. The motion was granted in a May 22, 2015 Board decision, which also indicated that the Board would set a due date for OFAs in a future decision. Conrail provided the valuation information on June 1, 2015.

Following completion of the environmental and historic review process, the Board served a decision on February 10, 2025, directing Conrail to either certify the accuracy of the valuation information it submitted in 2015 or inform the Board that it will update the valuation. In that same decision, the Board directed the City and CNJ to inform the Board whether they still intended to submit an OFA and explained that the Board will not accept additional notices of intent from any other entities. Thereafter, Conrail informed the Board that it would provide updated valuation information and the City and CNJ each informed the Board of their intent to submit an OFA.

In a decision served March 5, 2025, the Board directed Conrail to submit updated valuation information as specified in 49 C.F.R. § 1152.27(a), (d) (2009), and permitted both the City and CNJ to submit an OFA within 30 days of Conrail's submission. The Board reminded the parties that "the OFA process is designed for the purpose of providing continued rail service and the Board need not require the sale of a line under the OFA provisions if it finds that an offeror has no genuine interest in providing rail service or that there is no likelihood of future traffic." Harsimus Aban. Proc., AB 167 (Sub-No. 1189X) et al., slip op. at 3 (STB served Mar. 5, 2025). The Board further stated that any OFA in this proceeding should address one or more of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the Line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible. Id.

On April 17, 2025, Conrail submitted updated valuation information. Conrail stated that it obtained an appraisal to value the "60-foot-wide strip of land between CP Waldo and the

western edge of the 446 Newark Avenue, LLC, parcel beneath what was the former Harsimus Branch trestle,” and that such land was valued at \$500,000. (Conrail Resp. 2, Apr. 17, 2025.)

On May 19, 2025, the City filed an OFA to purchase, for \$767,100,³ Conrail’s interests in the Harsimus Branch between “the west boundary of Marin Boulevard on the east side” and “Chestnut Avenue on the west side,” and an additional “two contiguous pieces of property owned by Conrail” that are not part of the Harsimus Branch to support the proposed rail use.⁴ (OFA 1, 10-11.) The City also states that it seeks an aerial easement over what is referred to as Conrail’s National Docks line. (*Id.* at 2, 14.) The City explains that its offered price exceeds Conrail’s valuation by \$267,100 because the City’s offer includes 2.33 acres of land rather than the approximately 1.24 acres valued by Conrail, and because Conrail’s appraisal contains errors. (*Id.* at 13-14.) The City further states that, as a government entity, it is presumed financially responsible. (*Id.* at 12.)

The City “readily acknowledges that the driving force behind the City’s OFA is for passenger/light rail use of the corridor.” (*Id.* at 8.) However, the City claims that it “fully understands that [its] OFA must be for continued rail use” and asserts that “restoration of the line for light rail/passenger use can be done compatibly with freight rail use.” (*Id.* at 9.) According to the City, its proposed light rail passenger system would essentially subsidize costs associated with line reconstruction for all rail uses, and thus “this is a circumstance where the inclusion of passenger services is what makes freight rail potentially viable.” (*Id.*) The City also argues that it need not demonstrate a commercial need for rail service because evidence of commercial need is irrelevant where a community seeks to preserve a rail line for passenger purposes. (*Id.* at 15-16.) Instead, the City asserts that there is a need for passenger service along the Harsimus Branch. (*Id.* at 16-28.)

On May 21, 2025, Conrail responded in opposition to the City’s OFA. Conrail argues that the City has not demonstrated a continued need for freight rail service over the Harsimus Branch. (Conrail Resp. 1-2, May 21, 2025.) Conrail states that the Harsimus Branch has not been used for decades and contains no track or track structure, the City has not identified a rail shipper or receiver, and the City does not estimate the value of rail traffic that could move over the Line. (*Id.* at 2.) Rather, Conrail argues that, at most, the City suggests that “the Harsimus Branch could potentially be used for freight rail service should a sufficient demand for[] service ever materialize.” (*Id.* at 3.) Conrail asserts that, even where the purpose of an OFA is primarily for developing new passenger service, an offeror must show a need for freight rail service. (*Id.* at 4.)

Additionally, Conrail argues that the City has not shown that it is financially capable of restoring freight rail service over the Harsimus Branch within a reasonable time. Conrail

³ The City offers to pay an additional \$3 million “[i]f Conrail is able to convey or cause to be conveyed to [the] City in fee the eight blocks of the [Harsimus] Branch” that Conrail “transferred to its chosen developer.” (OFA 2 n.1.)

⁴ CNJ did not file an OFA by the deadline the Board imposed in its March 5, 2025 decision. However, CNJ filed a May 20, 2025 letter informing the Board that it intends to file two motions in this proceeding on or about May 27, 2025.

disputes the City's assertion that it is presumed financially responsible and argues that any presumption is rebutted by facts showing that the cost to rehabilitate the Harsimus Branch would exceed the funds the City supposedly allocated to the OFA process. (*Id.* at 6.) Finally, Conrail argues that the City's proposal is not feasible because it requires the use of Conrail parcels that are not facilities on the Harsimus Branch. (*Id.* at 7-8.)

For the reasons discussed below, the City's OFA will be rejected.

DISCUSSION AND CONCLUSIONS

In submitting an OFA under 49 C.F.R. § 1152.27(c)(2)(iii) (2009), an offeror must set forth its offer in detail and meet the requirements for the contents of an offer found at 49 C.F.R. § 1152.27(c)(1)(ii). Within five days of an OFA being submitted, the Director of the Office of Proceedings determines whether the offer satisfies the standards of 49 U.S.C. § 10904(d). 49 C.F.R. § 1152.27(e)(2); *see* 49 C.F.R. § 1011.8.

The Board has stated that “[t]he OFA process is designed for the purpose of continuing to provide freight rail service” and that granting an OFA is “not appropriate” when “the statutory objective of continued freight rail service would not be likely to result from [an] OFA proposal.” Roaring Fork R.R.—Aban. Exemption—in Garfield, Eagle, & Pitkin Cntys., Colo., AB 547X, slip op. at 4-5 (STB served May 21, 1999); *see also* Union Pac. R.R.—Aban. & Discontinuance of Trackage Rts. Exemption—in L.A. Cnty., Cal., AB 33 (Sub-No. 265X), slip op. at 2 (STB served May 7, 2008) (“The OFA process is designed for the purpose of continuing to provide freight rail service.”). Where an offeror has no genuine interest in providing rail service or there is no likelihood of future traffic, the Board need not require the sale of a line under the OFA provisions. Union Pac. R.R., AB 33 (Sub-No. 265X), slip op. at 2.

The City has not attempted to show a need for continued freight rail service on the Harsimus Branch. The City claims that it “fully understands that [its] OFA must be for continued rail use,” but it has not tried to show that there is a commercial need for freight rail service over the Harsimus Branch. (OFA 7.) The City identifies no active shippers on the Harsimus Branch—which contains no track and has not been utilized for decades—and does not identify any potential shippers or receivers. (*See id.* at 15-16 (stating that letters from potential shippers or receivers would be irrelevant because the OFA is for passenger and commuter rail purposes).) Rather, the City asserts that its contemplated passenger rail use will be “compatible with” freight rail service and that its proposed passenger rail service will make freight rail “potentially viable.” (*Id.* at 8-9.) But this hypothetical possibility of compatible freight service provides no basis for concluding that shippers would be likely to use the Line if continued rail service were made available and that there is likely to be any traffic enabling the City to provide such service. *See* Roaring Fork R.R., AB 547X, slip op. at 4.

Moreover, the City implies that it would cease any hypothetical freight rail service on the Line as soon as permissible. (OFA 8, 15 (asserting that communities can “employ the OFA remedy for passenger purposes so long as they did not discontinue their freight obligation for two years”)); *see* 49 U.S.C. § 10904(f)(4)(A) (prohibiting the purchaser of a line sold under the OFA provisions to transfer or discontinue service on that line during the two-year period

following consummation of the sale). Indeed, support statements provided by the City focus on the need for passenger rail service, rather than continued freight rail service. (See OFA 17-27.) This indicates that the City does not have a genuine interest in providing freight rail service, and that allowing the OFA process to proceed would be an abuse of agency process.

The City also fails to show that rail service on the Harsimus Branch is operationally feasible. Among the feasibility issues, as Conrail notes, is that the City's proposal contemplates the use of Conrail-owned parcels that are not part of the Harsimus Branch. (Conrail Resp. 7, May 21, 2025; see OFA 11-12, 31-32 (stating that one parcel "follows the route of a former connector no longer in use between the Harsimus [Branch] and another rail line" and would be used for transload purposes).) Conrail states that one such parcel is an abandoned portion of its River Line, which does not connect to the Harsimus Branch. (Conrail Resp. 7, May 21, 2025.) The OFA thus raises jurisdictional questions with respect to property outside the Harsimus Branch that the City identifies as necessary to its proposal. (*Id.* at 8 (arguing that the City cannot acquire Conrail's River Line through its OFA, and thus fails to present a feasible proposal for freight rail service over the Harsimus Branch).)

For the reasons addressed above, the City's OFA is not for the purpose of continued rail service. Therefore, the OFA will be rejected.⁵

It is ordered:

1. The City's OFA is rejected.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

⁵ Because the OFA will be rejected, Conrail's assertion that the record rebuts the presumption that the City is financially responsible need not be addressed here.