

ENTERED
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June 9, 2025
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Consolidated Rail Corporation – Abandonment Exemption – In Hudson County, NJ	)))	Docket No. AB 167 (Sub-No. 1189X)
CSX Transportation, Inc.—Discontinuance of Service Exemption – In Hudson County, NJ	)))	Docket No. AB 55 (Sub-No. 686X)
Norfolk Southern Railway Company – Discontinuance of Service Exemption – In Hudson County, NJ	))))	Docket No. AB 290 (Sub-No. 306X)

**REPLY TO THE
APPEAL OF DIRECTOR’S DECISION**

Respectfully submitted,

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Dated: June 9, 2025

Attorneys for LLCs

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Hudson County, NJ	)	
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Pursuant to 49 C.F.R. § 1011.2(a)(7), the LLCs¹ submit the following reply to the appeal of the decision of the Director, Office of Proceedings, filed by the City of Jersey City (“City”).

SUMMARY

The Director’s May 23 Decision correctly rejected the City’s Offer of Financial Assistance (“OFA”) to purchase Conrail’s interest in a substantial portion of the Harsimus Branch over which rail service was discontinued over three decades ago.

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.

The LLCs are the owners of much of the underlying real property on which the rail line right of way is situated. The line had not provided service for over a decade when the LLCs acquired the property in 2005. The LLCs have been and remain committed to working with its developer/purchaser, Jersey City Embankment Associates LLC (an affiliate of the Albanese Development Corporation), the City, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition to implement a balanced plan that envisages preservation, open spaces, and a linear park and a pedestrian and bicycle trail of unsurpassed excellence on all but one block of the Embankment blocks, following rail line abandonment.

This proceeding has continued for well over a decade, effectively seizing and preventing the protection and productive use of property no longer needed for common carrier railroad transportation purposes. This delay deprived the public of the substantial benefits (including a beautiful, elevated park) that could have been and still can be achieved through preservation and responsible redevelopment.

Through its OFA, the City has taken the unfortunate path of seeking to take the property through a forced sale, but without any showing of commercial need for continuing freight rail service over the line through a quiet residential neighborhood. It does so without any feasibility studies, and without any concrete plans, funding, or approvals to restore freight rail service and establish new light rail service which the City says is its aim. But simply wanting to “preserve a line for light rail/passenger commuting purposes” for sometime in the future, which is all the City states is its basic intention, is

not a sufficient basis to obtain OFA approval. The City identifies no legitimate basis, let alone the required material error, to overturn the Director's sound decision, and its appeal should be promptly denied.

A. Section 1102(a)(7) Appeals Are to Be Granted Only in Limited Circumstances

Section 1152.25(e)(2)(ii) of the Board's regulations provides that appeals of the Director's decision will be granted "only upon a showing that the action would be affected materially because of new evidence, changed circumstances, or material error." *Indiana Sw. Ry. Co. – Abandonment Exemption – in Posey & Vanderburgh Cntys., Ind.*, AB 1065 X (STB served Apr. 7, 2011) at 4; *Consolidated Rail Corp. – Abandonment Exemption – in Phila., Pa. et al.*, AB 167 (Sub-No. 1191X) (STB served Oct. 26, 2012) at 5. The City has not demonstrated that the Director made any error, much less a material one, nor has it suggested that any new evidence or changed circumstances warrants overturning the Director's decision. The appeal should therefore be denied.

B. The Director's Decision Properly Found a Lack of Commercial Need for Freight Rail Service

Section 1152.27(c)(1)(iv)(E) of the Board's rules requires the City to "[d]emonstrate that there is a continued need for rail service on the line" including "[e]vidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need)." As the Director's decision correctly found, the City's OFA provided no support statements from shippers or receivers, did not identify any active shippers, or

potential shippers or receivers, and made no claims of any commercial need for continuing freight rail service. *Id.* at 4.

The City (at 9-12) points to a City Ordinance from over a decade ago authorizing the City to spend up to \$5.7 million under an OFA to acquire the line for “continued freight rail and other compatible public purposes,” and if successful, authorizing the City to (a) “solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property,” and (b) “solicit proposals from consultants to prepare plans and recommendations . . . for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.” Ord. 14-103, para. 4.

The Director’s decision correctly determined that such a “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.” *Id.* at 4. This finding is soundly supported by Board precedent specifying, as cited in the Director’s decision, that “where . . . the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service.”

Roaring Fork R.R. Holding Auth. – Abandonment Exemption – in Garfield, Eagle, & Pitkin Cntys., CO, AB-547X (STB served May 21, 1999) at 4 (“*Roaring Fork*”) (citing *The Burlington N. & Santa Fe Ry. Co. – Abandonment Exemption – in King County, WA*,

AB-6 (Sub-No. 380X) (STB served Aug. 5, 1998); *see also R.J. Corman R.R. Prop., LLC – Abandonment Exemption – in Scott, Campbell, & Anderson Cntys., Tenn.*, AB 1296X (STB served Sept. 23, 2020) at 5 (“generalized and speculative” statements of support for continuing rail service are insufficient to demonstrate a continued need for rail service); *Union Pac. R.R. – Abandonment Exemption – in Lassen Cnty., Cal, & Washoe Cnty., Nev.*, AB 33 (Sub-No. 230 X) (STB served Sept. 19, 2008) (rejecting OFA where the offeror is not genuinely interested in, or capable of, providing rail service or there is no likelihood of future traffic).

C. The Director’s Decision Properly Found That General Support Statements Focused on Future Passenger Rail Service Is Insufficient to Support a Valid OFA

The City candidly admits (at 7) that it made no showing of any need for continued freight rail service, and that “[t]he City made no secret in its OFA that the rail use it seeks is passenger/commuter in nature,” feebly arguing that such use “would be compatible with also providing freight service.” The Director’s decision correctly determined that any professed support for new passenger service (on a line that never had passenger service), rather than continued freight rail service, “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.” *Id.* at 4-5.

The City insists that the mere possibility of future freight rail service restoration should be enough to support its passenger-focused OFA, citing what it calls the “leading case” of *Chicago & N. W. Transp. Co v. United States*, 678 F.2d 665 (7th Cir. 1982)

(“*Lake Geneva Line*”). The *Lake Geneva Line* case is inapposite. That case involved a 17-mile interstate rail line between Ringwood, IL and Lake Geneva, WI, a rural area which had *active* freight rail and passenger rail customers who actively supported the OFA, and no new rail line construction or major rehabilitation was needed. There was no dispute over shipper need for continuing freight or passenger service, and unlike here, the involved continuing passenger service appeared to have been jurisdictional. The applicant railroad did not oppose the OFA, and it was approved without dispute. The only major issue arising before the ICC and the appellate court was the proper purchase price to be paid for the line.

The factual and legal distinctions are overwhelming. The Harsimus Branch has been out of service for 30 years. There are no current freight rail shippers. There is no current passenger rail service (and, again, there never was any passenger service), and, as a pivotal fact, the lines and rail infrastructure were removed long ago. The right of way is located in an urban area and all heavy industry that once used rail service is long gone. As confirmed in the Cultural Resources Identification Report (May 5, 2017), the eastern terminus of the line, which once served downtown Jersey City’s heavy industry and car floats used to deliver freight and livestock to New York City, has been redeveloped into a high density, urban commercial retail, office, waterfront esplanade, and residential area, with the full encouragement and participation of the City, starting long before service discontinuance in 1992. *Id.* at ii. The rail structures and plate girder bridges on and connecting the separate sections of the Embankment were removed at the request and

urging of the City in the mid-1990s. *Id.* There is no vestige of the eastern terminus of the line, which “has been completely transformed by modern urban renewal and development of retail, residential, and hotel properties.” *Id.*

Unlike in the *Lake Geneva Line* case, there are no active freight rail shippers or prospective shippers asking for continuing service, and there is not even any identified place along the line where rail-served customers could locate. Additionally, unlike in the *Lake Geneva Line* case, there is no active passenger rail service to be continued that could possibly support restored freight rail service, and there has been no showing that either freight rail and/or passenger service could feasibly and economically be restored. *E.g., R.J. Corman R.R. Prop., LLC – Abandonment Exemption – in Scott, Campbell, & Anderson Cntys., Tenn.*, AB 1296X (STB Director’s decision served June 26, 2020) at 4 (“While the Board may take into account that passenger service might enhance the financial feasibility of freight operations, given that the record here does not otherwise demonstrate a continued need for freight rail service, evidence of an excursion railway on its own cannot justify an OFA.”) (citing *Atchison, Topeka & Santa Fe Ry. – Aban. Exemption – in Atchison Cnty., Kan.*, AB 52 (Sub-No. 79X), (ICC served Apr. 13, 1995)).

Moreover, it is notable that the City has failed to inform the Board that the easternmost block (Block 1) of the existing Embankment was thoroughly studied by the City to the extent that the City approved a redevelopment plan, known as the Luis Munoz Marin Boulevard Redevelopment Plan, amended and updated multiple times, most recently on July 10, 2024 (Ord. 24-057). Under the City’s most recently approved

Redevelopment Plan, freight rail is not a permitted use.

(https://data.jerseycitynj.gov/api/datasets/1.0/luis-munoz-marin-boulevard-redevelopment-plan/attachments/luis_munoz_marin_rdp_amd7_20240710_pdf/).

Likewise, the City’s Sixth Street Redevelopment Plan, adopted on November 28, 2022 (Ord. 22-090) covering blocks 2-6 of the Embankment (referred to as the “Harsimus Branch Ecological Corridor District”) and parts of blocks 7 and 8 of the Embankment, requires these remaining portions of the Embankment to be used as an open space and trail system. The Plan provides that the blocks “may accommodate future implementation of a trolley or light rail system,” but the Plan’s land use restrictions do not permit freight rail service on the property.

(https://data.jerseycitynj.gov/api/datasets/1.0/redevelopment-plan-6th-street-embankment/attachments/6th_street_embankment_rdp_original_adoption_20221128_pdf/

). These redevelopment plans are directly at variance with the City’s purported aims in submitting an OFA.

While the City Council approved an OFA over a decade ago (Ord. 14-103), subsequent events have negated that authorization, making it stale. By the unanimous votes of the City Council in 2022 and 2024, the commercial freight service referenced in the 2014 Ordinance is not a permitted use of the property. The City has authorized much of the remaining portions of the eastern portions of the Harsimus Branch east of Marin Boulevard to be fully developed (and redeveloped) into retail, office buildings, and residential high-rise apartments. The area that surrounds the stone Embankment between

Brunswick Street and Marin Boulevard is a beautiful residential neighborhood. The City's continuing contentions that it is seeking to take the line for "compatible freight use" and will actually immediately restore and operate the line for such use, is unsupported, contrived, contrary to the City's more recent enactments, and an abuse of agency process. The City's actions over the past several years actually belies the position being asserted by the City in its OFA, and in its appeal.

D. The Director's Decision Properly Found That the City Failed to Present a Feasible Proposal for Service over the Harsimus Branch

Under Section 1152.27(c)(1)(iv)(E) of the Board's rules, the City must demonstrate that "continued service is operationally feasible." An offeror must have a concrete plan for rehabilitation, including how rehabilitation would be funded, with revenues that could be generated by operations to support rehabilitation and continuing service. *Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, & Humboldt Cntys., Cal.*, AB 1305X (STB served Oct. 20, 2022) at 3 ("*Great Redwood*"). The City points to the possibility of locating a transloading facility to transload unspecified commodities on the westernmost portion of the line, somewhere near Waldo Avenue, north of the Harsimus Cemetery, presumably for public use, but admits that it needs to acquire extra properties from Conrail that are not a part of the abandonment to try to create a site for the transloading facility close to the line. This area is restricted in size with no obvious access for trucks, and hemmed in by geography, NJ

PATH rail tracks, residences along Waldo Avenue, and the cemetery. The City also vaguely describes the Embankment area to be used for “maintenance.”

The City has had well over a decade since the abandonment application was filed to come up with a feasible plan for freight rail service restoration, including facility siting, acquisition of property, facility design, and funding. Yet it has done nothing in furtherance of such an approach. It presented no feasibility studies, designs, plans, or approvals to achieve its plan. Moreover, the City did not point to any private or public hearings that have been held to date by planning agencies or the City Council on any specific rail freight or passenger service plans or studies.

Under the circumstances, the Director’s decision properly and necessarily found that the City failed in its responsibility to present a feasible plan that could possibly lead to successful continued rail operations. *Id.* at 5. This decision is consistent with Board precedent. *E.g., Roaring Fork*, at 4; *Consolidated Rail Corp.*, AB 55 (Sub-No. 710X) (STB served Oct. 26, 2012) at 7 n.14 (rejecting OFA where offerors failed to demonstrate substantial shipper support and to “provide[] any credible reason to believe that their proposal could lead to successful rail operations”).

The City contends (at 7) that “[t]he passenger use would in effect be a massive subsidy for freight” – yet nowhere in its OFA did it even attempt to demonstrate funding sources, passenger traffic studies, potential passenger revenues, agreements with New Jersey Transit, possible grants, or anything else to substantiate how such “massive subsidies” might come about and be achieved. Under these circumstances, the Director’s

decision was again clearly correct. *E.g., Roaring Fork*, at 4; *Great Redwood* at 3 (rejecting OFA where “[offeror] does not adequately demonstrate nor specify a plan for rehabilitation, including how the rehabilitation would be funded,” and the offeror provided only a “speculative” projection of revenues that could be generated through service); *Indiana Sw. Ry. Co.*, AB 1065X (STB served Apr. 8, 2011) (rejecting OFA where City offeror knew of no entity that wanted service over the line, the City had not formulated any plan for service on the lines, taken any steps toward applying for grants, obtained funds to rehabilitate lines and activate service, and shown any efforts to pursue business opportunities).

The very foundation of the City’s OFA, premised on the effectuation of new light rail service, is clearly specious, at best. Downtown Jersey City is already fully served by the Hudson-Bergen Light Rail (“HBLR”), a \$2+ billion light rail transit system with 24 stations running north-south on 34 miles of track on the Hudson River waterfront between Hudson and Bergen Counties. The HBLR line has been recently constructed (and is being expanded). (https://www.fhwa.dot.gov/ipd/project_profiles/nj_hudson_bergen.aspx). It took years to bring about the new service, although recent extensions appear to have been delayed by funding challenges. HBLR has stops just a few blocks away from the east side of the Embankment at Newport and Harsimus Cove.

The City’s OFA contended new light rail is needed to serve downtown, Journal Square, and commuters headed to Secaucus. However, it failed to inform the Board that Journal Square, located on the NJ PATH, already connects to the HBLR at Newport (it is

an approximately 9-minute train ride between Newport and Journal Square), which is a short walk from the Marin Boulevard Embankment block. It also failed to inform that Board that Secaucus Junction (Frank R. Lautenberg Rail Station) also connects to the HBLR at Hoboken Terminal Station (it is an approximately 23-minute train ride between Newport and Secaucus). (https://content.njtransit.com/sites/default/files/pdfs/maps/HBLR_RSM_080522_low.pdf).

The light rail passenger service that the City proposed to effectuate through its OFA is in fact already established and fully operational. In addition, the City did not point to any hearings, meetings, or approvals that have been held, initiated, or made on the possibility of instituting new, redundant/duplicative light rail service to Journal Square and Secaucus, from downtown Jersey City, at a probable cost of hundreds of millions of dollars. The likely explanation is there is no real, bona fide interest in bringing about such service because that service already exists.

CONCLUSION

The Director's decision rejecting the OFA is fully supported, and the City has not demonstrated that the Director engaged in any material error, or that any other new evidence or changed circumstances warrant the Board overturning the Director's decision. The City's allegations do not even come close to establishing material error, and its appeal is wholly unsupported and unjustified. The City's OFA proposal is the latest iteration of its ongoing efforts to take the property at much less than fair market value to benefit itself, through the auspices of the STB, and was properly rejected. The

Board should promptly uphold the Director's decision and proceed expeditiously to issue a final decision allowing this long-delayed abandonment exemption proceeding to be concluded.

Respectfully submitted,

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Dated: June 9, 2025

Attorneys for LLCs

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of June, 2025, caused a copy of the foregoing filing to be served upon all parties of record.

/s/

Peter A. Pfohl