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9 June 2015

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ENTERED
Office of Proceedings
June 10, 2015
Part of
Public Record

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

Re: Conrail - Abandonment Exemption - in Hudson
County, N.J., AB 167 (Sub-no. 1189X)
and related proceedings AB 55-686X
and AB 290-306X

Request for Clarification concerning OFA Due Date
and
Motion regarding Schedule for Submission of OFA's

Expeditious Action Requested

Dear Ms. Brown:

In this Board's Decision in this proceeding served May 26, 2009, this Board directed Consolidated Rail Corporation to supply the City and CNJ Railroad (the two parties who timely filed notices of intent to OFA) the information specified in 49 CFR 1152.27(a). This Board further stated that "[t]he time period for City and CNJ to file an OFA is tolled until 10 days after Conrail provides City and CNJ with the information...." Decision, *supra*, at 3, ordering paragraph 1.

Pursuant to this Board's Decision served May 22, 2015, directing Conrail to produce the 1152.27(a) information by June 1, 2015, Conrail did so. Although this Board indicated at page 7 of its May 22, 2015 Decision that it would provide a schedule for filing OFA's, this Board did not formally vacate the provision in ordering paragraph 1 of the May 26, 2009, decision making OFA's due, in effect, on June 11, 2015. The Board as of today (June 9) has not yet issued an alternative due date.

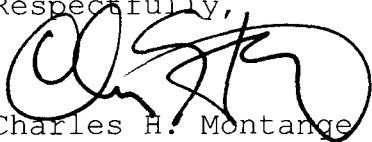
On inquiry to the public information office of STB on June 9, 2015, counsel for City was advised that STB in essence takes the position that no due date has been established for OFA's. City of Jersey City intends to argue (and is arguing in the pleading attached, at footnote one) that the time deadlines established for OFA's in this Board's regulations must be strictly met, such that late-filed notices of intent such as that filed by frequent-filer James Riffin on June 8, 2015, must be rejected. Since Jersey City seeks the rigorous application of this Board's deadlines applicable to OFA procedures, the City also wishes to make absolutely certain that its own OFA abide by them. In particular, City does not wish to expose itself to the argument that it has failed to timely file an OFA, which it is otherwise ready to file, on June 11. City therefore requests this Board immediately to vacate the requirement in ordering paragraph 1 of the May 26, 2009 decision calling for OFA's to be filed, in effect, on June 11, 2015, or in the alternatively, grant the attached motion. In all events, City wishes formal clarification that its OFA is not due on June 11, 2015.

For the reasons stated in the attached motion, City also requests that this Board make OFA's due on June 18, 2015. As indicated in the emails attached to the motion, the interested railroad (Conrail), and the other potential OFA applicant (CNJ) consent to, or do not object to, this due date.

As further indicated in the motion, counsel for the City (the undersigned) in all events requests a due date for OFA's before he leaves for Europe (June 27) and not during the interval he is away (June 27 to July 14).

Thank you for your assistance in this matter.

Respectfully,


Charles H. Montange
for City of Jersey City

Att. Motion

cc. Parties per certificate of service

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

Motion Regarding Schedule for Submission of OFA's

City of Jersey City hereby moves this Board to enter an order making "offers of financial assistance" due on Thursday, June 18, 2015, for the reasons stated below. As indicated, the other eligible OFA applicant (CNJ) consents to this motion, and the pertinent railroad (Conrail) does not object.

As this Board has recognized, Congress intended the OFA process to be governed by a stringent time schedule such that tardy participants did not hold up proceedings. E.g., Consolidated Rail Corp. - Abandonment Exemption - in Philadelphia, PA, AB 167-1189X, served Oct. 26, 2012, slip at 5. Two parties (City of Jersey and CNJ Railroad) filed timely notices of intent to file OFAs.¹ In this Board's Decision in

¹ City notes that a perennial OFA-filer, James Riffin, on or about June 8, 2015, purported to late-file a notice of intent to OFA in this proceeding. As Conrail pointed out in its pleading filed June 9, 2014, Mr. Riffin's attempt to participate in the OFA process is over six years too late. Riffin's June 8 filing indicates that he is also belatedly seeking valuation information concerning which, as a late filer, he has no entitlement. In all events, Mr. Riffin's rights to participate

this proceeding served May 26, 2009, this Board directed Consolidated Rail Corporation ("Conrail") to supply the information specified in 49 CFR 1152.27(a) and stated that "[t]he time period for City and CNJ to file an OFA is tolled until 10 days after Conrail provides City and CNJ with the information...." Decision, supra, at 3, ordering paragraph 1.

The AB 167-1189X proceeding passed into abeyance for a long period while Conrail and interveners 212 Marin Boulevard LLC (a developer) contested STB jurisdiction in various judicial proceedings. After this Board's jurisdiction was judicially confirmed, Conrail still failed to provide the 1152.27(a) information, and City moved to compel compliance with this Board's May 26, 2009 Decision requiring provision of the information.

In a Decision served May 22, 2015, STB granted City's motion to compel, requiring Conrail to supply all its 1152.27(a)

in an OFA for this line terminated when he failed timely to file a notice of intent to file an OFA by March 2009. See BNSF Railway-Abandonment Exemption - in Oklahoma County, OK, AB 6-430X, served Feb. 27, 2007. Mr. Riffin's participation will delay the proceeding and any further delay is highly prejudicial to the City, which has already been hammered with ten years of litigation in connection with the Harsimus Branch. Moreover, Mr. Riffin in the past has sought to advise interveners 212 Marin Boulevard, et al. (the developer interests to whom Conrail purported to sell the historic Embankment parcels) on how to "defeat" the City, apparently by pretending to be a railroad. Mr. Riffin's involvement in this proceeding appears to be for the purpose of further obstruction and delay. His untimely notice of intent to OFA should be summarily dismissed.

information by June 1, 2015. Conrail complied, furnishing City with its responsive information on June 1, 2015. Under ordering paragraph 1 of STB's Decision served May 26, 2009, this would render OFA's due on June 11, 2015.

However, without expressly vacating the relevant part of ordering paragraph 1 of the May 26, 2009 Decision, this Board's Decision of May 22, 2015 states that the Board "will set a due date for OFAs in a future decision." Decision served May 22, 2015, slip op. p. 7. No alternative due date has yet been set. City, very concerned not to waive its rights to OFA, has been advised orally by the public information office of STB that Office of Proceedings is treating the OFA due date as postponed pending further order of this Board. In the cover letter to this motion, the City has requested clarification that the due date for OFA is not June 11, 2015, preferably by immediate vacation of the portion of the May 26, 2009 order making OFA's due 10 days after June 1, 2015.

The rail line at issue in this proceeding - the Harsimus Branch - has been the subject of prolonged and costly proceedings before this agency and the federal courts. In addition, the City and supporters of public use of the Harsimus Branch have been subjected to repeated lawsuits by the developer interests to whom Conrail purported to sell the historic

Embankment portions of the Harsimus Branch without requisite abandonment authorization from this Board since 2005.

OFA procedures in general provide an efficient means to resolve disputes over rail lines given the tight time tables ordinarily applicable in OFA proceedings. The City, after ten years of litigation, wishes to pursue the OFA remedy in the hope that it will result in relief that ultimately resolves this decade-long abandonment controversy. While City recognizes that any time schedule should have some flexibility, now that Conrail has provided all of its 1152.27(a) valuation information, the ordinary time tables for OFA should apply. City does not support further delays and distractions. In addition, one of the shippers supporting the City's OFA has expressed a need for rail service in the near future, and delay in the OFA process, by creating additional uncertainties for the shipper, must be viewed as prejudicial to the shipper's commercial interests. City is prepared to move forward and, indeed, is prepared to file an OFA essentially on any date specified by the Board from June 11 onward.

City is authorized to state that CNJ Railroad, the other party entitled to file an OFA, supports the proposed June 18 due date. See e-mail attached.

City is also authorized to state that Conrail does not object to this schedule. See e-mail attached.

PRR Harsimus Stem Embankment Preservation Coalition and
Rails to Trails Conservancy consent to this motion.

If this Board does not establish the prompt deadline (June
18) sought by City herein for OFA's, City respectfully requests
that the Board set a deadline for a date on or before June 26,
2014. Counsel for City will be out of country during the
interval June 27 to July 14, 2015, on previously scheduled
travel.

For the foregoing reasons, City accordingly requests this
Board to issue an order making OFA's due by close of business on
Thursday, June 18, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Montange', with a large, stylized flourish at the end.

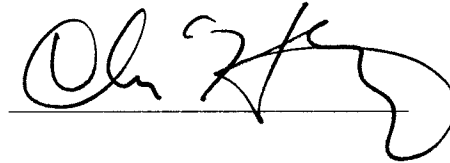
Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City of Jersey City

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class on or before the 10th day of June 2015, as well as by providing email service, addressed to

Robert Jenkins III, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101
For Conrail

Daniel Horgan, Esq.
Waters, McPherson, McNeill PC
300 Lighting Way
Secaucus, NJ 07096
For 212 Marin et al

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

cc. Rails to Trails Conservancy, PRRHBEPC, CNJ Rail (email and US Mail) and remainder of attached service list (by US Mail), all on or before June 10, 2015

Service List

Daniel D. Saunders
State Historic Preservation Office
Mail Code 501-04B
NJ Dept. Environmental Protection
P.O. Box 420
Trenton, NJ 08625-0420

Massiel Ferrara, PP, AICP, Director
Hudson County Division of Planning
Bldg 1, Floor 2
Meadowview Complex
595 County Avenue
Secaucus, NJ 07094

Joseph A. Simonetta, CAE,
Executive Director
Preservation New Jersey
414 River View Plaza
Trenton, NJ 08611

Justin Frohwith, President
Jersey City Landmarks Conservancy
54 Duncan Avenue
Jersey City, NJ 07303

Eric Fleming, President
Harsimus Cove Association
344 Grove Street
P.O. Box 101
Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

President
Van Vorst Park Association
91 Bright Street
Jersey City, NJ 07302

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

Dennis Markatos-Soriano
Exec. Director
East Coast Greenway Alliance
5315 Highgate Drive, Suite 105
Durham, NC 27713

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin, President
Friends of Liberty State Park
580 Jersey Ave., Apt. 3L
Jersey City, NJ 07302

Aaron Morrill
Civic JC
64 Wayne St.
Jersey City, NJ 07302

Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069

Note: without waiver of our objections to James Riffin's
purported efforts to intervene, City is serving this pleading
upon him by email at his email address on or before June 10,
2015

Subject: AB 167 (Sub-No. 1189X)
From: Sloane, Adam C. (ASloane@mayerbrown.com)
To: c.montange@frontier.com;
Cc: RMJenkins@mayerbrown.com;
Date: Tuesday, June 9, 2015 3:09 PM

Charles:

This is to confirm that Conrail does not object to a June 18, 2015 due date for the OFAs, and you may state that Conrail does not object to the June 18 due date in your motion.

Adam

Adam C. Sloane
Mayer Brown LLP
Tel: + 1-202-263-3269
Mobile: 202-549-7667
asloane@mayerbrown.com
1999 K Street, NW
Washington, DC 20006-1101

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Subject: Harsimus OFA

From: Eric Strohmeier (cnjrail@yahoo.com)

To: c.montange@frontier.com; jcurley@curlaw.com; jfarrell@cnj.org;

Date: Tuesday, June 9, 2015 3:27 PM

Dear Mr. Montange,

Please accept this E-mail as a written moralization of our telephone conversation of this afternoon June 9th, 2015.

Pursuant to that conversation, you are authorized by us to: **1.** use this Email in your STB request, and; **2.** to represent to the STB CNJ's position, as outlined below.

CNJ Rail has no objection to any date the City feels comfortable with requesting as a due date for OFA's for the Harsimus line. Your suggestion of June 18th is fine with us.

As we also discussed; **provided that the City does, in fact, submit an OFA which includes a rail corridor east of Marin Blvd** (like we discussed), **then CNJ will NOT file any OFA at all in this proceeding. CNJ will happily get behind and fully support the City's OFA.**

The only reason CNJ has not yet withdrawn its own *Notice of intent to file an OFA* is CNJ's longstanding concern that the failure to secure a corridor for rail service from the light rail line to the embankment would threatened the long-term viability of the corridor for future transportation uses. Not pursuing a rail corridor east of Marin would also threaten the viability of all the remaining track along Provost Street.

So long as the City is seeking a corridor capable of securing a route which can meet our concerns for preserving a corridor east of Marin Blvd, then CNJ's interest and concerns are satisfied. However, if the City is not going to seek a rail corridor east of Marin Blvd, then CNJ would respectfully ask that the City consult with us on an appropriate OFA due date so that CNJ may file its own OFA in order that we may be able to "close the gap" by securing a corridor between the embankment and the light rail line.

Our strong preference is for the City to acquire and control the entire corridor as a single unified line.

To the extent the City will need a designated operator to operate any freight service along the line, CNJ reiterates our long communicated interest in providing that service, in the event the City chooses to hire a contractor to perform that service.

CNJ looks forward to seeing this long drawn out matter come to an end. We have no objection to providing whatever assistance the City may need to achieve that objective.

If you have any questions, feel free to contact me at any time.

Sincerely,

Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
(908) 361 - 2435