

Before the Surface Transportation Board

STB Docket No. EP 729

OFFERS OF FINANCIAL ASSISTANCE

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Part of
Public Record**Reply to Comments to Notice of Proposed Rulemaking**

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”) respectfully submit the following responses to comments on the proposed amendments to Board regulations concerning Offers of Financial Assistance (“OFA”), 49 C.F.R. § 1152.27, in response to the September 30, 2016 notice and decision.

Six parties provided comments. Those generally favoring the rules, and offering various suggestions to strengthen them came from the Association of American Railroads (AAR), Norfolk Southern Railway Company (NS), and the LLCs, all as parties with significant interests at stake. The Department of Defense, Military Surface Deployment and Distribution Command (DOD) raised a federal (and perhaps state) budgetary issue that can be addressed consistent with the LLCs' comments, but without undercutting the purpose of eliminating OFA abuse.

Two sets of comments were submitted from the opposing quarter. James Riffin submitted comments that seek to undercut the financial responsibility provisions and notice of intent provisions, areas where Mr. Riffin has been long identified as a serial abuser of the OFA process. He also suggests leaving the

door open to more abuse by not requiring proof of a real need and support for actual rail freight service.

Finally, the City of Jersey City (“Jersey City”) simply opposes the rule-making, a curious position for a city that has repeatedly claimed it is suffering OFA abuse from Mr. Riffin and others, yet sees the rules as threatening its own OFA plans for uses other than rail freight service. Having no plans or intention of actually providing rail freight service, both Riffin and Jersey City provide a context in which the LLCs' suggested strengthening of the proposed rules becomes all the more justified.

Specific responses from the LLCs to each of these five commentators are as follows:

A. Association of American Railroads (“AAR”)

The LLCs concur with the comments filed by AAR addressing financial responsibility, continued rail service, and identity of offerors (AAR Comment, pages 2-7). In particular, the LLCs agree with AAR that notices of intent should be filed in all OFA cases, not only exempt abandonments. Under the new rules, the notice of intent process would be done in conjunction with the preliminary showing of financial responsibility. Thus, the notice of intent is identified as an important part of the process to prevent OFA abuse.

AAR also addressed the provision that OFA offerors identify themselves in a reasonable manner. In furtherance of that comment, the LLCs would suggest that proposed 49 U.S.C.A. § 1152.27(c)(iv)(G) include a requirement that legal

entities provide a certificate of good standing for their state of incorporation and, where necessary, a certification that the entity is authorized to do business in the state (or states) in which the line of rail is located. Sham entities or shell corporations with no business or assets should not be permitted to obstruct the purposes of the OFA process as established by Congress, to free operating railroads of rail assets that are both unprofitable and not needed in the national rail network. Since these lines also frequently involve underlying real estate interests of third parties, a strong policy of excluding fronts, shills and charlatans from the process is entirely consistent with the intent of Congress, as well as Judicial and Board precedent.

Concerning the determination of the escrow amount, the LLCs express no opinion on the technical issues concerning calculation of the cost of maintaining an existing line, and defer to the expertise of the AAR on that subject. However, the LLCs have also asked the Board to focus on lines with little or no existing rail infrastructure to be maintained, suggesting that the cost of replacement of missing elements would be a necessary and logical complement to posting an escrow for maintenance of what does exist. If no rail assets remain on a particular line, that likelihood of an abusive OFA may be greater, and having the absence of rail infrastructure reduce the escrow would make little sense if the Board seeks to set a minimum threshold for financial responsibility.

B. Norfolk Southern Railway Company (“NS”)

The LLCs agree with the comment by NS that state and local governments should not be presumed to be financially responsible. NS provides the good example of the City of Detroit, which filed for bankruptcy protection in 2013. The LLCs would also cite as a category of examples small municipalities with neither the population nor the resources to be financially responsible. Rather than enjoying a presumption of financial responsibility, the state and local government not set up for the purpose of conducting rail service should affirmatively demonstrate financial responsibility to at least begin the OFA process. There are often state statutory and municipal charter issues involved that can require a municipality to take certain budgetary steps before making the kinds of operating and public rail carrier commitments required for an OFA. While it may be reasonable to excuse a federal or state transportation offeror from a showing of financial responsibility, as the DOD illustrates, it would likely be the very rare exception that a local government entity or authority would find the circumstances right to conduct rail freight operations, and therefore even more exceptional that it would be fully conversant with what it may need to do to properly authorize and carry through such action. The requirement to show financial responsibility up-front would avoid a meritorious abandonment unduly delayed by a local government, whether its intentions be meritorious, or otherwise.

The LLCs also agree with NS that the formula for the escrow should be calculated to ensure a reasonable cost of maintaining the line, but that

calculation should include considerations of any amount of significant rail infrastructure that may need to be replaced at the outset. (See prior comment.)

Finally, the LLCs agree that the OFA offeror should address each of the Los Angeles factors, infra. The application of each factor would certainly be a case-sensitive inquiry. However, all factors should be addressed and proven to the Board's satisfaction under the totality of the circumstances. The LLCs also agree that for lines on which there has been no service for at least two years, a heightened showing of these factors should be made. Accordingly, the LLCs join in NS' proposal on the alteration of 49 U.S.C.A. § 1152.27(c)(iv)(E).

C. Department of Defense, Military Surface Deployment and Distribution Command ("DOD")

DOD proposes exempting governmental entities from the proposed escrow requirements. The LLCs have no objection to that proposal to the extent it extends to federal agencies—the Armed Services, in particular—and state transportation agencies. The intended purpose of the proposed regulations of curbing abusive OFA practices does not extend to the federal government.

However, the LLCs do not believe that all governmental entities should be exempt from the escrow requirement. 49 U.S.C.A. § 1152.27(c)(iv)(D) should read as the LLCs proposed in their December 5, 2016 comment. DOD's comment describes a line of rail the Army currently owns and operates, which it acquired directly from the rail carrier many years ago. That example supports the LLCs' views that only governmental agencies with experience operating and properly funding lines of rail should be presumed to be financially responsible. Such

entities understand the costs of such responsibility, and one may presume federal agencies, or State transportation agencies, would not seek to purchase or subsidize a line of rail for non-rail purposes.

DOD's concerns about the escrow requirements are also legitimate and help illustrate how any governmental OFA offeror needs to understand the complexities of funding rail operations. DOD has illustrated this by showing practical issues with having federal departments pay funds into escrow. The LLCs would have no objection to federal agencies and State transportation agencies exempt from the escrow requirements. Again, responsible offerors genuinely interested in rail service, and that understand the costs, need no extra scrutiny; and requiring clearly responsible agencies such as Armed Services to escrow funds is not necessary in order to prevent abuse.

Accordingly, the LLCs support DOD's comments to the extent they apply to federal agencies and State transportation agencies. All other governmental entities, however, should not be presumed to be financially responsible, and should pay an appropriate amount into escrow.

D. James Riffin ("Riffin")

Riffin stands apart from the previous commentators. His railroad experience is limited to nothing more than a wild paper chase that has lasted well over a decade, during which he has earned the well-deserved enmity of America's railroads and numerous others, including the LLCs. While his comments are largely technical in nature, his participation in this rule-making

cannot be imagined to be an epiphany from which he now abhors abuse of the OFA process. Based on the text of the proposed rules, and the purpose of the rulemaking, there is no reason to accept any of Riffin's comments.

On financial responsibility, Riffin has no credibility, based on his actual record before the Board. Nonetheless, he asks that an offeror be allowed to demonstrate financial responsibility by disclosing hordes of cash, portfolios of stocks, bonds, and precious metals, and instead of "letters of credit," to permit "lines of credit," a term which sounds vaguely like credit cards. None of these are the kinds of true net-worth, liquid assets, business credit, or appropriated public funds that should be available to a legitimate OFA offeror. There is no reason to change the regulation to expressly allow an offeror to rely on such things, as they are a thinly disguised invitation to further abuse. Riffin's position is, and has always been, that he is "entitled" to participate in any OFA process, and will undoubtedly interpret any regulation as permitting him to participate. But the Board has a more important obligation that requires it to open the process only to qualified and properly funded OFA applicants who will not use it to amuse themselves, or otherwise.

To further Riffin's approach, he seeks to relax the notice of intent rule. Such would run directly counter to the purpose of avoiding abuse. As noted above, the preliminary financial responsibility provision of the new regulations—an important part of the new rules designed to curtail abuse—is performed in the context of the notice of intent

In commenting on maintenance costs, apparently seeking to focus narrowly only on the cost of maintaining what exists, and not what needs to be restored, Riffin provides some technical points about the regulations, such as clarification as to which unit of weight the word “ton” refers. This focus, in the LLCs' opinion, is directed here because no legitimate offeror is likely to put the cost of actually restoring a line for real rail service on his credit card, nor borrow against his 401k for the same purpose. In fact, if the escrow deposit is made on credit, or through some personal credit facility, that alone would cause any rational lending officer or similar financial manager, to seriously question the viability of the offeror's ultimate ability to perform. In other words, Riffin's focus on making the refundable deposit on credit will be viewed by OFA abusers as simply an easy ticket to participate in the OFA process, and not as a good faith showing of earnest money backed by resources available and committed to the larger task of continuing rail freight service. The abuser, knowing they are unlikely to succeed, will simply get their deposit back at the end, thus entirely frustrating the intended function of the escrow. Accepting Riffin's comments as confirmation of the proposed rule's sufficiency, but without strengthening it as the LLCs have suggested in their initial comments, will continue to allow OFA abusers to run wild in the OFA process, Riffin included.

Finally, the LLCs reject Riffin's position that the conjunctive “and” should be replaced with the disjunctive “or” in 49 C.F.R. § 1152.27(c)(iv)(E). Satisfying only one criterion is a meaningless exercise, and meaningless exercises are what OFA abusers revel in. For example, an OFA offeror may be able to show some

alleged shipper interest, but such support is pointless if the continuation of rail service is not operationally feasible or does not enjoy public support (such as conflicting with passenger service). Like Jersey City, Riffin hopes that he can make a strong showing on one prong, while ignoring the practical impossibility of continuing rail service.

E. City of Jersey City (“Jersey City”)

Jersey City's involvement in the OFA process dates back to 2006 when it first sought to use Federal railroad law to preclude the LLCs from using their properties for non-rail purposes because they had not been abandoned by Conrail. In that effort Jersey City stands shoulder-to-shoulder as partners with the Rails-To-Trails Conservancy, Eric Strohmeyer (as CNJ Rail), a local open space advocacy group, and some local historic preservation enthusiasts. Their common goal is not rail service, but non-rail use, or no use. For the past ten years, they have succeeded in preventing any use of the LLCs' property. Like Riffin, Jersey City and its partners have never owned or operated a rail line, and have absolutely no intention of ever doing so.

In that context Jersey City does not offer any constructive comments, but instead makes unfounded criticisms of the Board's rulemaking efforts. Jersey City attacks one of the central pillars of the rulemaking—the requirement that all OFA offerors demonstrate that the purpose of the OFA is to continue rail service. It is thus no surprise Jersey City would oppose a regulatory amendment

that codifies the long-standing principle that OFAs are for continuing freight (and financially contributing passenger) rail service only.

Jersey City does not offer any proposed alterations to the new regulation. Instead, it levels unfounded criticisms, and invites the Board to start the rulemaking process anew. It is not clear what amendments Jersey City would find appropriate, and the distinct impression left from Jersey City's comment is that the proposed rule, in virtually any form, would ensnare any OFA that Jersey City has been preparing to file with the Board. Jersey City's goal is not to prevent OFA abuse, but to facilitate its own plans, plans that must be far outside the legitimate purposes of the OFA process.

Despite Jersey City's comments having nothing to do with preventing OFA abuse, several of those comments deserve specific responses:

1. The New Regulations will not make OFA abuse easier – Citing serial abusive filer James Riffin as an authority, Jersey City argues that the Board's proposed additions to 49 C.F.R. § 1152.27 will not deter abuse, but will in fact make abuse easier. Riffin apparently made a statement in a brief he filed in a lawsuit initiated by him in the United States District Court for the District of New Jersey against the owners and developers of a parcel in Jersey City. (City's Comment at 4). It is understood Riffin's lawsuit sought to impose burdens on the owners and developers because of the unabandoned line of rail that

traverses the site.¹ This is the same line (the Harsimus Branch) that passes over the LLCs' Embankment properties and that is the subject of a pending exempt abandonment proceeding. Consolidated Rail Corporation—Abandonment Exemption—in Hudson County, NJ, docket number AB-167-1189X (the “Harsimus Abandonment”).

The quote from one of Riffin's District Court filings is not placed into any context by Jersey City. Jersey City attempts to present this quotation as “evidence” that the proposed regulations will make it easier for parties such as Riffin to “abuse” the OFA process because that is what Riffin allegedly believes. The quotation does not, however, support Jersey City's conclusion. Riffin's statement to the District Court voices his conclusion that the new regulations would make it easier to “prosecute” an OFA, not “abuse” it. Riffin based that conclusion on his misunderstanding that all he has to do is come up with \$4,000 and he can perfect an OFA for the Harsimus Branch. (City Comment at 4). Of course, that is not how the existing regulations work, and the new regulations include additional requirements beyond the cost of merely maintaining the line. Interestingly, as discussed, Jersey City objects to the very requirements that would prevent Riffin and others from abusing OFAs. One would not expect Riffin to tell the District Court in response to a motion to dismiss his complaint that the Board is actively in the process of adopting amended regulations that will

¹ It is also understood that Riffin's lawsuit has been dismissed without prejudice, while he seeks in substance the same relief in a recently filed petition with the Board. See, Petition for Declaratory Order—Hudson Street Industrial Track/Harsimus Branch—Jersey City, Hudson County, NJ, docket number FD 36078.

make it harder for him to accomplish his goals, and the entire argument made by Jersey City has no merit on numerous grounds.

For its part, Jersey City's effort at trying to undermine confidence in the effectiveness of the rulemaking should not succeed. There is nothing in the record to support Jersey City's conclusion that Riffin believes he can more easily abuse the OFA process by the new rules, or that, even if that is the case, Riffin's belief is rational. The LLCs believe that by creating requirements that notices of intent be filed in all OFAs, that proposed OFA offerors be deemed to be preliminarily financially responsible, and that the offeror demonstrate the OFA, if approved, will reasonably result in continued rail service, will both be a disincentive to prospective OFA abusers and weed out abusive offerors who actually file an OFA.

2. The Proposed Requirements are consistent with Board Precedent and the ICCTA – A critical component of the proposed amendments to 49 C.F.R. § 1152.27 is that the OFA offeror demonstrate that it intends to continue rail service, in accordance with Congressional intent and Judicial and Board precedent. Jersey City comments that the new regulations—including, presumably, 49 C.F.R. § 1152.27(c)(iv)(E)—are “difficult to square with past precedent.” Jersey City describes these regulations as imposing a “bona fide” requirement to all OFAs. Citing Board rejection of a bona fide requirement in 1996, Jersey City extrapolates that beyond financial responsibility, the Board cannot impose further showings on the OFA offeror. This not only flies in the

face of common sense, but also the precept that an administrative agency must control its own process and procedures to accomplish its legislatively mandated goals and to avoid abuse. That is exactly what the Board is doing with the proposed amendments. The LLCs urge the Board to do that fully and effectively so that further abuse is foreclosed and that individuals and groups intent on something other than a continuation of rail freight service do not hijack proceedings.

Jersey City argues that in 1995, Congress eliminated the requirement that OFAs are for continuing rail service when it recodified former 49 U.S.C.A. § 10905 as current 49 U.S.C.A. § 10904. Former 49 U.S.C.A. § 10905 stated that the OFA must enable rail service to continue, while that language did not carry over into current 49 U.S.C.A. § 10904. However, the Ninth Circuit Court of Appeals has expressly rejected the argument Jersey City makes here that in adopting 49 U.S.C.A. § 10904, the Congress eliminated the requirement that OFAs are for continuing rail service. Redmond-Issaquah RR Preservation Assoc. v. STB, 223 F.3d 1057, 1061-1063 (9th Cir. 2000). Relying on the plain language of 49 U.S.C.A. § 10904, legislative history, and this Board's interpretation of the statute, the Ninth Circuit concluded that Congress did not eliminate the purpose of OFAs as being for continuing rail service, and affirmed this Board's decision to deny an OFA where the offeror had no intention of continuing rail service, and had failed to show any interest in rail service. Redmond-Issaquah has been consistently followed by other Circuit Courts. See, Borough of Columbia v. STB,

342 F.3d 222, 226 (3d Cir. 2003), and Kulmer v. STB, 236 F.3d 1255, 1257 (10th Cir. 2001).

Despite this actual precedent and long-standing statutory interpretation, Jersey City believes that the Board is thus hamstrung and can make no further inquiry beyond financial responsibility. However, the Board has long established that its assessment of an OFA may include whether the offeror intends to continue rail service. In Los Angeles Cnty. Metro. Transp. Auth. -Abandonment Exemption-in Los Angeles Cnty., STB Docket No. AB-409-5X (served June 12, 2008), the Board, relying on past decisions, held, “The OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic.”² (Slip op. at 2, citing Union Pacific Railroad Company-Abandonment and Discontinuance of Trackage Rights Exemption-in Los Angeles County, CA, STB Docket No. AB-33 (Sub-No. 265X) (STB served May 7, 2008); Roaring Fork Railroad Holding Authority-Abandonment Exemption-in Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X (STB served May 21, 1999), aff’d sub nom, Kulmer, supra, 236 F.3d at 1256-1258; The Burlington Northern and Santa Fe Railway Company-Abandonment Exemption-

² Emphasis (underlining) added to word “or.” Here the disjunctive is used making it clear that the Board has the ability to reject an OFA if an applicant fails to meet any of the enumerated criteria, not that an applicant has to meet only one of them.

in King County, WA, STB Docket No. AB-6 (Sub-No. 380X) (STB served Aug. 5, 1998)).

Jersey City is well aware of this requirement because that was the specific ruling handed down to Jersey City in the Harsimus Abandonment when the Director of Proceedings determined that OFAs filed in that matter must satisfy the requirements of the Los Angeles decision. (May 26, 2009 Decision). The full Board then upheld the Director's judgment, and rejected Jersey City's appeal. (November 2, 2015 Decision).³

The proposed regulations include the same requirements, and properly incorporate them as requirements for all OFAs. The LLCs support inclusion, as do the other commenters; Jersey City alone opposes having this Board find that OFAs are solely for continuing rail service.

When examining Jersey City's criticisms and claims that the Board lacks authority, the Board should consider that Jersey City has adopted an ordinance authorizing it to file an OFA in the Harsimus Abandonment. (See, LLCs' initial comment, Exhibit A). That ordinance states Jersey City's intent to use the OFA as a means to acquire an interest in real estate, not a line of rail, and that Jersey City plans to use the land acquired through the OFA for both rail and non-rail purposes. One of Jersey City's intended uses is to "preserve" the Harsimus

³ Jersey City then attempted to appeal to the D.C. Circuit Court of Appeals, but was rebuffed because the issue was not ripe. Jersey City's present arguments are a transparent effort to lay the basis for an appeal of whatever rule is adopted so as to further delay the Harsimus Abandonment. The LLCs therefore request that the Board specifically address Jersey City's arguments on rule-making so as to present the D.C. Circuit with a full and complete record on these issues.

Branch as a corridor for future rail use. This Board expressly rejected the view that OFAs are for preserving lines of rail for future use. See, September 30, 2016 Decision, at 12).⁴

Finally, the LLCs note that while disputing the authority to impose “bona fide” requirements in the OFA process, Jersey City supports the inconsistent imposition of those same requirements on non-governmental OFA filers. (City Comment at 9, “Jersey City has no objection – indeed, we vigorously support – requiring private parties invoking the OFA process to show an overriding freight rail need when their OFA will interfere with a public project of any sort. That is exactly what long standing agency precedent supports.”) The purpose of an OFA does not vary from filer to filer. All OFA offerors should demonstrate the OFA would achieve Congress’ singular goal: continuing rail service.

3. Government entities, like any other OFA offeror, should be required to show that an OFA is for continuing rail service – Jersey City hopes to carve out an exception that local governments do not have to show the OFA is for continuing rail service. It is noted that Jersey City has argued that the Board should not impose a “bona fide” requirement on OFAs, but then seems to have no objection to such a requirement as long as Jersey City itself is exempt from the regulation. Jersey City’s argument is based on the specious conclusion

⁴ Adopting Jersey City's reasoning would open the door to abusive OFAs for public trail uses after a railroad had ruled out the trail option under the National Trails Act, 16 U.S.C.A. § 1247(d), exactly what has happened in the Harsimus Branch case, where Rails-to-Trails Conservancy remains as an active participant with Jersey City despite Conrail's rejection of the trail use preservation option.

that a governmental entity cannot abuse the OFA process, and that anything a local government does under the guise of an OFA is a “public project.”

First, although research has not found any cases where a governmental entity filed an abusive OFA, Jersey City's OFA in the Harsimus Abandonment has yet to be filed. To date Jersey City has not publicly disclosed its plans to reinstitute long-gone rail freight service in a dense urban redevelopment area where zoning, economic realities, property values, thousands of new residents, and just plain common sense unite in a chorus to say that there is not even a remote possibility of restoring freight rail service. Jersey City's own actions of enacting an ordinance allowing it to file an OFA to purchase land instead of a rail line, and to use that land for both rail and non-rail purposes, is itself convincing evidence that a local government may commit to file an OFA for purposes other than continuing rail service. Jersey City's comments should be viewed in the context of its stated intent to use OFAs for non-rail purposes.

Second, the Board's proposed regulations do not usurp the function of local governments' control over land use matters. Jersey City seems to proceed under the misimpression that an OFA is a way of advancing public projects that have nothing to do with freight rail service. Rather than interfere with local decisions, the Board's new regulations will in fact facilitate the return of unused and long abandoned, obsolete rail lines to full local control by making certain that an OFA—which would, if successful, mean the line is not abandoned and remains under the exclusive jurisdiction of the Board—is being used only in legitimate circumstances and for its intended purpose.

4. State and local governments should not be presumed to be financially responsible, and should place a reasonable escrow – The LLCs have commented that there is no reason why a state or local government that is not established for the purpose of operating rail lines should be presumed to be financially responsible. All others, with no experience in the railroad business, the neophytes as well as those who act in concert with others to avoid proper OFA purposes, should be required to make a proper escrow. Exceptions, as proposed by DOD, and the LLCs, would be written into the rule only where justified by clear and discernable criteria; to do otherwise would open the door to continued abuse, albeit it through the vehicle of willing (or naïve) local officials.

The escrow requirement comes in the context of the preliminary showing of financial responsibility. Although municipalities, as governments, are currently presumed to be financially responsible, the escrow requirement still has an important role. A local government unfamiliar with the cost of providing rail service may not appreciate the costs involved in entering such a venture. Requiring the escrow in fact helps local governments understand the costs associated with the OFA undertaking. Thus, requiring the escrow will help deter non-meritorious OFAs because the local government—and indeed all potential OFA filers—will be directly confronted with a true sense of cost. The escrow may deter parties, including municipalities, interested in filing an OFA from getting involved. On the other hand, a party genuinely interested and capable of undertaking the common carrier obligation will not find any reason to protest

the escrow requirement. Nor would it have an objection to the additional certification proposed by the LLCs that would ensure that any governmental entity not in the railroad business, first get its bearings before diving in.

The LLCs note that there is no legitimate reason for presuming a state or local government is financially responsible to operate a line of rail. Accordingly, the escrow requirement that Jersey City complains of will help end abuse of the OFA process, and avoid creating a municipal loophole, as Jersey City seems to be suggesting should be done.

5. The Board's Proposed Rulemaking is appropriately focused on preventing OFA abuse – The LLCs do not read the Board's proposed regulations as protecting railroads at the expense of the public and public projects, as Jersey City suggests. OFAs should not be used in an abusive or harassing way because many interested parties, such as railroads, property owners (like the LLCs), and indeed the public, may be burdened by improper filings. Abusive filings also impose the burdens of wasted time and resources of the Board. The regulations will protect all stakeholders from abuse. The LLCs see no need, as Jersey City does, to draw false distinctions between railroads, and any non-railroad operator that is genuinely interested in continuing rail service.

Conclusion

The LLCs believe that the new regulations, if adopted, will make it far more difficult for a party with no legitimate interest or ability to continue rail service

to use the OFA for improper uses, while imposing no barriers to parties with real interest in continuing rail service. The LLCs' request that their comments be considered, and their proposed additions be included in the final rulemaking decision so that OFA abuse is cut-off, as it should be, by all past, present, and future abusers.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of this document has been served upon each of the following persons whose names appear on the Service List of the Surface Transportation Board in this matter by regular mail, deposited with the US Postal Service on this date.

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