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ENTERED
Office of Proceedings
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Public Record

28 May 2014
By Express Delivery

Hon. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street. S.W., Room 100
Washington, D.C. 20423

- Re: (1) 212 Marin Blvd et al - Pet. Dec. Order, F.D.
35825, filed May 8, 2014;
(2) City of Jersey City et al -Pet.Dec. Order, F.D.
34818, filed Jan. 12, 2006
(3) Consolidated Rail Corporation - Aban. Exemp.-in
in Hudson County, NJ, AB 167 (Sub-no. 1189X),
placed in abeyance by this Board by a decision
served April 20, 2010

Dear Ms. Brown:

In F.D. 35825, 212 Marin Blvd et al ("the LLCs") seek an exemption from abandonment regulation for the Harsimus Branch. In our Reply filed 22 May 2014, City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition et al ("City et al") showed that the LLCs sought an "exemption" for an illegal de facto abandonment by Conrail (namely the sale of the line to the developer in 2005) of the former mainline of the Pennsylvania Railroad in Jersey. The LLCs purchased the line for demolition and conversion to housing and skyscrapers based on what they elsewhere have asserted was fraudulent representations by Conrail that the property was not a regulated line.¹ In our

¹City et al challenged the illegal abandonment in a proceeding (F.D. 34818, filed in January 2006) in which this Board determined that the property was a line of railroad subject to the agency's abandonment jurisdiction, a position subsequently confirmed - after prolonged litigation by Conrail and the LLCs

Reply, City et al noted that this Board did not permit third parties such as the LLCs to employ exemption procedures and in accordance with precedent may not do so here. The Board instead must lift the abeyance order in the long-pending abandonment proceeding initiated by the railroad for the illegal de facto abandonment [AB 167 (Sub-no. 1189X)].

This illegal abandonment involves an historic structure long eligible for the National Register. In addition, the line in question is located between two national historic districts. This Board may not license an illegal de facto abandonment by means of an "exemption" without prior compliance with the National Historic Preservation Act, 16 U.S.C. 470f and 470h-2(k), and all other otherwise applicable environmental statutes. In Consummation of Rail Line Abandonments, Ex Parte 678, served April 23, 2008, slip at 4, this Board indicated it would take enforcement actions to ensure compliance with environmental laws when illegal de facto abandonments were brought to its attention, not "exempt" developers and railroads from the law. Moreover, City et al require the line for continued rail, trail, and other public purposes. The line may not be licensed for abandonment by means of some kind of exemption from 49 U.S.C. 10905 (public use conditioning) at the behest of a developer to facilitate a private use derived from an illegal de facto abandonment that the developer claims was based on fraudulent and negligent representations by Conrail. Two parties (City and CNJ) in AB 167 (Sub-no. 1189X) have sought to invoke 49 U.S.C. 10904 in respect to the Harsimus Branch at issue herein. The line may not be exempted from 49 U.S.C. 10904 merely to facilitate a developer either. Any new "developer's convenience" exemption would also violate notice and due process rights in the situation here: there has been neither Federal Register nor newspaper notice to the public, which will surely be interested in any new proceeding to authorize an illegal abandonment threatening an historic asset and Jersey City's last underutilized transportation corridor via some kind of ex post facto imprimatur so it may be destroyed at the behest of a developer and Conrail.

on issues that the LLCs now say were, or were based on, fraudulent representations by Conrail -- by the United States District Court for the District of Columbia and, on appeal, the D.C. Circuit (2014).

The petition in F.D. 35825 may also be read as a claim that this Board lacks jurisdiction by reason of a "severance" of the Harsimus Branch by the River Line Abandonment (AB 167 Sub no. 1067N) such that this Board lacks jurisdiction. In our Reply filed 22 May 2014 we explained that the LLCs' claim was specious for a host of reasons. In the interval, we have been provided a copy of the "notice of insufficient revenue" ("NIR") filed by Consolidated Rail Corporation ("Conrail") for the River Line, dated Oct. 31, 1985, which we are told is from this Board's files. The map description attached to the NIR indicates that the River Line NIR terminates at River Line's connection to the Passaic and Harsimus Branch at CP Waldo. The map shows the "P&H Branch" extending to Harsimus Cove Yard and not severed in any fashion by the River Line. (By 1985, Conrail sometimes called the Harsimus Branch the Passaic and Harsimus Branch or "P&H Branch.") F.D. 35825 should be summarily dismissed or denied. Any portion of F.D. 35825 not dismissed or denied outright must be treated as an untimely petition to reopen in F.D. 34818 and denied on grounds of failure to show new evidence or changed circumstance at all, and certainly no material error.

None of the LLCs' other contentions is relevant or has merit for the reasons already decided by this Board in 2007 in F.D. 34818. F.D. 35825 is another cobbled up effort to evade this Board's jurisdiction or somehow to finesse the relief to which City et al, and the public, are entitled under federal -- and federally mediated state -- law. It must be denied.

By my signature below, I certify service by US Mail, postage pre-paid first class or equivalent, on this date on the addressees in the attached service list.

Respectfully submitted,



Charles H. Montange

for City of Jersey City,

Rails to Trails Conservancy
and Pennsylvania Railroad Harsimus
Stem Embankment Preservation
Coalition

Att.

cc. Service List

Service List

[AB 167 (Sub-no. 1189X)]

- with address corrections as of Jan 2014 -

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For 212 Marin et al

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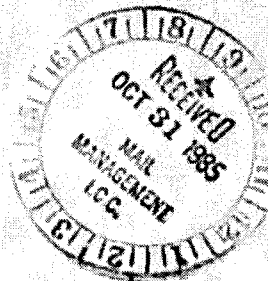
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Watchung, NJ 07069

FILED

OCT 31 1985

INTERSTATE
COMMERCE COMMISSION



October 31, 1985

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenue, NW
Washington, DC 20423

Re: Application Under 45 U.S.C.A. §748
for Abandonment of the River Line
in Hudson County, New Jersey
Docket No. AB 167 (Sub No. 1067N)

Dear Mr. Bayne:

Enclosed for filing with the Commission are the original and six copies of Notice of Insufficient Revenues in reference to the above line. This Notice is submitted under 45 U.S.C.A. §748.

Copies of the Notice have been served on the persons, entities, and agencies designated on the attachment to this letter.

Please stamp and return the enclosed extra copy of this letter to acknowledge receipt.

Very truly yours,

Charles E. Mechem
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103-2959
(215) 977-5017

CEM/kmt

Enclosures

Docket AB 167
(Sub No. 1067N)

NOTICE OF INSUFFICIENT REVENUES
CONSOLIDATED RAIL CORPORATION

Notice is hereby given that the line of railroad described below, operated by Consolidated Rail Corporation (Conrail), generates insufficient revenues to justify its continued operation and maintenance.

The River Line, as more fully described at the top of the map which accompanies this notice and is referred to below.

The proposed abandonment involves approximately 6.95 miles of line in Hudson County, New Jersey.

Accordingly, it is Conrail's intention, after the expiration of ninety (90) days following the filing of this notice, to file application with the Interstate Commerce Commission (ICC) under 45 U.S.C.A. §748 for a certificate approving the abandonment of the aforesaid line. A map showing the location of the line and a copy of Section 748 are attached to this Notice.

Copies of this Notice have been served, on the date specified below, on the Governor of New Jersey, the New Jersey Public Utility Commission, the New Jersey Department

of Transportation, the State Agricultural Extension Service, the Rail Service Planning Office of the ICC, the Federal Railroad Administration, the Office of Proceedings of the ICC, the Bureau of Outdoor Recreation, the Office of Special Counsel of the ICC, the National Railroad Passenger Corporation, the Military Traffic Management Command, the Railroad Retirement Board, and the Railway Labor Executives Association, and the other persons listed on the letter accompanying this notice.

Date: October 31, 1985

RIVER LINE

Segment 1

From its connection to the Passaic and Harsimus Branch at CP "Waldo"
In Jersey City (Approx. M.P. 0.0 +)
To the south side of Clifton Road in Weehawken (Approx. M.P. 4.7 +)
Including the River Yard

Segment 2

From the south side of Clifton Road in Weehawken
(Approx. M.P. 0.0 +)
To the northwest side of Tonnelle Avenue, but excluding that portion
of the line, associated trackage and underlying right of way to retain
access and continue service to Durkee Foods, in North Bergen
(Approx. M.P. 1.53 +)

National Docks Secondary
In Jersey City

From its connection with the River Line at CP "Nave"
To the east side of Newark Avenue, a distance of approx. 1,350 feet +

Weehawken Branch (Chicken Yard)
in Weehawken

From its connection to the River Line on the east side of Willow Avenue
To the end of the track, a distance of approx. 2,450 feet +

EXHIBIT A
LOCATION AND MAP
RIVER LINE

(See Page 2 of 2 for Description)

State(s):	<u>NJ</u>	Counties:	<u>Hudson</u>	Approx. Length
				<u>6.95 Miles +</u>

