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248551

October 4, 2019

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
October 4, 2019
Part of
Public Record

Re: Canonie Atlantic Co. - Abandonment Exemption - Hallwood to Cape Charles, Va.
STB Docket No. AB 1266X
Response to NYP&N Letter of Intent

Dear Ms. Brown:

Canonie Atlantic Co. ("CAC") received a service copy of the attached letter of intent which appears to have been submitted by New York, Philadelphia & Norfolk Rail Road, Resurrection Limited ("NYP&N") to the Board for filing in the above-referenced matter.¹ The NYN&P letter of intent may not have been properly submitted as it has not been posted in the Board's docket for this proceeding.

CAC submits this response requesting that the Board either reject the NYN&P letter of intent as untimely, or find that the NYN&P letter of intent does not meet the requirements of 49 CFR 1152.27(c)(1)(i) and (ii), including not demonstrating preliminary financial responsibility.

¹ The NYP&N letter of intent was also submitted in the companion Docket Nos. AB 1267X and AB 1276X. However, Docket No. AB 1266X is the proper proceeding for considering an offer of financial assistance ("OFA") for purchase of the rail line since it is the abandonment proceeding (as opposed to one of the discontinuance proceedings), and accordingly CAC is responding as the Petitioner in this docket.

1. Lack of timeliness

Pursuant to the notice served by the Board on August 2, 2019, expressions of intent to file an OFA issued by the Board were required to be filed by August 12, 2019. The NYP&N letter of intent is dated September 24, 2019, over six weeks after the due date – and it still has not been docketed. NYP&N miss-cites and misapplies language that allows an offer to be filed at any time. (The correct cite is 49 CFR 1152.27(c)(1)(iii)(A).) The cited language does not apply to expressions of intent – such expressions are due within 10 days after the Federal Register publication of notice of the filing of the petition. 49 CFR 1152.27(c)(1)(i). The timing is important and allows the Board at an early stage to determine preliminarily if a potential offeror is financially responsible. The timing of NYP&N's letter of intent flouts the regulatory requirements and should be summarily rejected by the Board.

2. Failure to comply with regulatory requirements

Alternatively, the Board should find that the NYP&N letter of intent does not meet the requirements for expressions of intent, and that NYP&N has not demonstrated that it is financially responsible.

First, under 49 CFR 1152.27(c)(1)(ii), the expression of intent must include a calculation of the preliminary financial responsibility amount as set forth in the regulation which includes an amount for maintenance, as well as an amount for the track based on current scrap prices. The NYP&N letter of intent does not include any calculation of the preliminary financial responsibility amount, and thus is defective.

Second, the expression of intent must demonstrate that the submitting party is financially responsible as defined in 49 CFR 1152.27(c)(1)(iv)(B). Under that section, the submitting party must demonstrate that it has or within a reasonable period of time will have the financial resources to meet the contractual obligations for purchase and subsequent maintenance. The regulation requires specific evidence of financial responsibility. Setting aside that NYP&N has failed to provide a calculation of the preliminary financial responsibility amount, it has also failed to include any evidence of its financial resources. NYP&N indicates only that it is a 501(c)(3) organization that will seek representation from government agencies for its board of directors. However, this potential representation (it is not clear that any have actually joined the board) does not entitle NYP&N to the same presumption of financial responsibility afforded to government agencies that have taxing power to raise funds to back up their offers. Even if NYP&N had governmental representatives on its board that would not be a guarantee that any of the government agencies would provide funding. Thus, the NYP&N letter of intent provides no support for the Board to find preliminarily that NYP&N is financially responsible.

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For the foregoing reasons, CAC request that the Board either reject the NYN&P letter of intent as untimely, or find that the NYN&P letter of intent does not meet the requirements of 49 CFR 1152.27(c)(1)(i) and (ii) and does not demonstrate preliminary financial responsibility.

Respectfully,

CLARK HILL PLC


Eric M. Hocky

EMH/e

cc: All persons shown in the attached certificate of service
Canonie Atlantic Co.

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Certificate of Service

I hereby certify that on this date, a copy of the foregoing letter was served by U.S. first class mail, postage prepaid, and by e-mail, on the following persons:

Roger W. Malik, Secretary
New York, Philadelphia and
Norfolk Railroad
112 Randolph Street
Cape Charles, VA 23310
rwmaliklaw@gmail.com

Thomas Bowden, Sr.
Timeless Counsel, PLC
8404 Ballantrae Court
Richmond, VA 23229
tom@timelesscounsel.com

Thomas J. Litwiler
Fletcher & Sippel, LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
tlitwiler@fletcher-sippel.com



Eric M. Hocky

Dated: October 4, 2019

NEW YORK, PHILADELPHIA AND NORFOLK RAILROAD RESURRECTION, LIMITED
112 Randolph Avenue
Cape Charles, Virginia 23310

757-779-9096

September 24, 2019

Chief
Section of Administration – Office of Proceedings
Surface Transportation Board
395 East Street, SW
Washington, DC 20423-0001

Reference: Canonie Atlantic - Petition For Abandonment
Docket Numbers: AB - 1266 X, AB – 1267 X & AB - 1276 X

LETTER OF INTENT

Dear Chief and Board Members:

INTRODUCTION

Your Intended Offeror, New York, Philadelphia & Norfolk Rail Road, Resurrection Limited is a functioning 501(c)3 organization, particulars follow, below.

EXEMPTIONS SOUGHT

The Legal Notice filed in the Eastern Shore Post on June 28, 2019 states, that Offers of Financial Assistance must be filed no later than 30 days after the Environmental Assessment (EA), becomes available. Your Offeror has been told that August 13, 2019, would be the normal filing deadline per 49CFR 1152.27 (C) (1) (i) [Expression of Intent to File Offer]. These instructions notwithstanding, Your offeror notes that 1152.27(c)(1)(i) (A) states, in plain language, that: *An offer may be filed and served at any time after the filing of the abandonment or discontinuance application or petition for exemption.*

Should this Honorable Board find this Intended Offeror's Expression of Intent, and/or Offer of Assistance is tardy, Your Offeror respectfully requests that the Board, nonetheless consider this offer as viable. The economic welfare of the least wealthy Counties in Region V, of the Commonwealth of Virginia is at stake.

All Railroad uses, freight, tourist and passenger (light rail) are viable, provided sound management practice; which, through a series of unfortunate circumstances, has not been exercised, to date. Intended Offeror's Offer of Financial/Other Assistance will explain further.

Your Petitioner for Abandonment requested exemption from the requirements of 49 CFR 10502, and from the prior approval requirements of 49 CFR 10903, having already torn out approximately seven miles of track, necessary to the success of commercial rail service in Zip Code 23310.

Your Intended Offeror, is a 501(c)3 organization, (and Sister Economic Development Corporation, below), and, is a solicitor of representation from Federal, State and City Governmental Agencies on Intended Offeror's Board of Directors. Given, the extended latitude to seek governmental, foundation, and private grants afforded Your Offeror by its 501(C)3 status; and, whereas, there is an absolute and constitutional need/requirement for Governmental Agency Representation on Intended Offeror's Board of Directors , Your Intended Offeror requests that the Surface Transportation Board (STB) extend the same presumption of Financial Responsibility to Offeror that is extended to other agencies at 49 CFR 1152.27(c)(4)(B).

OTHER PARTICULARS CONCERNING INTENDED OFFEROR

Your Intended Offeror is NYP&N Rail Road, Resurrection, Limited, (NYP&N), a non-profit Virginia Corporation, IRS [501(C)3, status granted in, or about, November 2018. Pursuant to the suggestion of the Commonwealth of Virginia's Tourism Corporation, NYP&N has created and incorporated a sister company, the New York, Philadelphia, and Norfolk R.R. Economic Development Corporation, which organization, is dedicated to the purpose of forming an economic development council for the region, whose, Board of Directors will be, those representatives chosen by the industrial customers of the railroad that Your Petitioner proposes to abandon, and representatives of such City, State, and Federal Governmental Agencies as are essential to regional economic development (IE Hampton Roads Transit, Virginia Tourism Corporation, Virginia Space, and NASA). Some merchants in the Accomack Northampton Region have stated that the sole reason that they have not utilized rail service for several years, is that they were refused service by Your Petitioner and its predecessors.

During the past 30yrs, 501(c)3 Railroad Preservation Agency, the New York, Philadelphia, and Norfolk Railroad Resurrection, Limited, (NYP&N) and its predecessor agents, have made several offers of financial assistance, and other proposals of support to Petitioner Predecessor Bay Coast Railroad, Predecessor, Eastern Shore Railroad, and Petitioner Canonie Atlantic (Accomack Northampton Transportation District Commission [ANTDC]) to offset impending losses. These losses, while not anticipated by ANTDC/Canonie Atlantic, were foreseeable due to impending changes in national infrastructure. ANTDC/Canonie Atlantic failed to employ sound practices, to avoid loss.

NYP&N intends to make a multi-modal offer of assistance, which includes, revitalization of direct operation of commercial, educational, historic, passenger, and Tourist Rail, service. Intended Offeror's predecessor agents, as far back as fifteen years ago, offered Petitioner, Canonie Atlantic tourist rail service, which, was then to be operated by The Central Virginia Railroad Company. That offer included right of way maintenance equipment, use of steam locomotives, passenger cars, and dining cars. At least two other offers of Assistance have been made, the most recent, by Intended Offeror in December 2019. Without discussion, or explanation, these offers were rejected. The sole response: "We don't want to be involved with a railroad". ANTDC/Canonie has, however, since directly solicited Intended Offeror, to make an offer, instead, to purchase parcels of railroad land, indicating that the use of that land would be "up to the Town" (of Cape Charles, VA).

Recently, at the behest of The Virginia Tourism Corporation NYP&N once again, offered assistance, when Bayshore concrete shut down, and freight usage was terminated. This time, NYP&N, received the curt answer from ANTDC, that the Commission "wants nothing to do with trains". With, total disregard for the existing businesses, ANTDC (Canonie Atlantic) has stated that: "the public would be better served with a bicycle trail" (as opposed to a properly operated railroad). By way of response, and, at the suggestion of The Tourism Corporation, NYP&N formed a 501c9 corp (NY,P&N RR Economic Development Corporation), to provide a nursery for growth of an association of (potential customer and other) businesses, for economic growth, through the railroad.

There is an existing need for commercial, passenger and tourist rail service. Total loss of these services will greatly hamper the economic development of the Counties of the Virginia Eastern Shore.

The historic fact that the Pennsylvania Railroad was the primary economic force behind the early development of the Eastern Shore of Virginia, coupled with, current needs, and, a brief review of the reasons for the later degradation of the rails, dictates that NYP&N RR Resurrection, Limited, with the support of State and Federal Agencies, make an offer that will retain and maintain rail service.

Sincerely,

Roger W. Malik

Roger W. Malik, Secretary
New York, Philadelphia, & Norfolk Railroad Resurrection, Limited
cc.nypn.rr@gmail.com

CC John D Heffner, Esquire at Clark Hill PLC
Sloane S. Carlough, Esquire at Clark Hill PLC
Hon. Elaine Luria

NOTARY ENDORSEMENT

STATE OF VIRGINIA

} TO WIT

COUNTY OF NORTHAMPTON

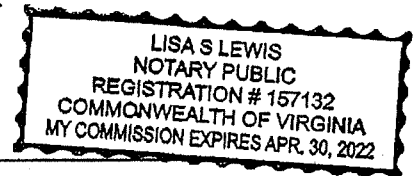
I HEREBY ATTEST AND AFFIRM that on this the 25 Day of September, 2019, that The Person properly identified, and/or known to me to be Roger W. Malik did appear before me and did sign and execute the foregoing document in my presence, and that he did swear and affirm that he is properly and fully authorized to so sign and execute.

Subscribed and sworn before me

Lisa S Lewis
Notary Public

9/25/19
Date

Seal



IN THE MATTER OF:

Pettion for Exemption, Discontinuance and Abandonment of

Accomack Northampton Transportation District Commission

AKA

Canonie Atlantic, LLC

APPLICANT

FROM Offeror

New York, Philadelphia, & Norfolk Railroad Resurrection, Ltd
112 Randolph Avenue
Cape Charles, Virginia 23310

* IN THE

* UNITED STATES

* OF AMERICA

* SURFACE TRANSPORTATION BOARD

* Docket No.'s: AB 1266

AB 1267

* AB 1276

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CERTIFICATE OF SERVICE

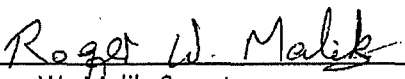
I HERBY CERTIFY that on this the Twenty-Fourth day of September, 2019, that I did cause a copy of the accompanying LETTER OF INTENT to be served, by First Class U.S. Mail, postage prepaid, upon:

John D. Heffner, Esquire
Clark Hill, PLC
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, D.C. 20004

and, upon

Sloane S. Carlough, Esq.
Clark Hill, PLC
1001 Pennsylvania Avenue
Suite 1300
Washington, D.C. 20004

SO CERTIFIED,



Roger W. Malik, Secretary
New York, Philadelphia, & Norfolk Rail Road Resurrection, Limited
112 Randolph Avenue
Cape Charles, Virginia 23310

cc.nypn.rr@gmail.com
757-779-9096
443-562-7527