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October 14, 2019

VIA E-FILING

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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 16, 2019
Part of
Public Record

Re: ANTDC/Canonie Atlantic Co. - Abandonment Exemption
Hallwood to Cape Charles, Va.
STB Docket No. AB 1266X, 1267X and 1276X
Reply to Response - NYP&N Letter of Intent

Dear Ms. Brown:

The Membership and meeting places and dates of the Accomack Northampton Transportation District Commission (ANTDC) and Canonie Atlantic Corporation (CAC) are identical. One claims to be a governmental agency, one a private company. No difference is indiscernable, except that one represents the interest of the people, the other its own interests.

Attempts by the public to assert public, State, and County interests, in the conduct of ANTDC business, are customarily thwarted by the standard announcement: "This meeting is now closed, as we are now holding a meeting of the Board of Directors of Canonie Atlantic". ANTDC/CAC, and/Clark Hill PLC, on their behalf, drafted the Notice of Intent to Discontinue and Abandon published in the Eastern Shore Post on June 28, 2019.

That Notice states, in pertinent part: ***The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the Petition for Exemption, for exemption, for discontinuance and abandonment. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, at 357- 395 E Street S.W. Washington, DC 20423, or by calling the OEA at (202) 245-0295.***

ANTDC/CAC's Notice contained that deadline, and, made no other mention of deadlines for response in its Notice of Intent to Discontinue and Abandon. Any notice published by The STB, or other parties, establishing other deadlines, may have appeared in the Federal Register. However, no further mention was made concerning ANTDC/CAC, or its Notice of Intent to Discontinue and Abandon, in any Publication local to the Citizens of rural Accomack, or Northampton Counties, including the Eastern Shore Post, (until ANTDC/CAC advertised for a Manager of Railway Property in that publication in September of 2019). It is a long-established rule of law, that any deficiency in a document should be interpreted against the interests of the drafting party.

49 CFR 1152.20(a)4 States in plain language: ***Newspaper publication. Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located.***

ANTDC/CAC published its Notice of Intent to Discontinue and Abandon on June 28, 2019 in the Eastern Shore Post. The Post is published in Accomack County, Virginia. The publication of this Notice was not sufficient in number of weeks published, nor, in publication in Northampton County.

Therefore, NYP&N submits, this reply requesting that the STB find the aforesaid ***Notice of Intent to Discontinue and Abandon*** to be insufficient notice to interested persons, and parties, in Accomack and Northampton Counties, for the proceedings associated with Dockets AB 1266 X, AB 1267 X, and AB 1276 X to have lawfully begun. NYP&N further requests that The Board inform CAC that its Application is, hereby suspended, and that CAC must properly publish, and, notify interested parties in the effected Counties, before its Application can be further considered.

NYP&N further requests that the Board consider its Letter of Intent, and, Offer of Financial and Other Assistance as relevant to the entirety of the Docket related to ANTDC/CAC's Application, as all three Docket Numbers are relevant to discontinuance, abandonment and the associated environmental assessment.

Regarding the balance of Mr. Hocky's correspondence of October 4, 2019:

While, Mr. Hocky would appear to have correctly cited 49 CFR 1152.27(c)(1)(i) and (ii), and, 49 CFR 1152.27(c)(1)(C) for their respective propositions, Mr. Hocky cites these rules outside of the context found, in the entirety of the Statute. For example, CFR 1159.29 provides the Board with the ability to accept late filings where the Board finds good cause for tardiness.

ANTDC/CAC has misled this Board into believing that it was impossible to find customers in the effected Counties to utilize 300 rail cars per year. Yet, NYP&N, which was forced, by ANTDC/CAC's prior negligence and current misrepresentation, to spend valuable response time surveying a portion of the customer base in Accomack and Northampton Counties, to reach a clear, and absolute, conclusion that customers previously denied service wish to utilize 1800 rail cars, each year. (See the sole Exhibit to NYP&N's Offer of Assistance).

ANTDC/CAC has misrepresented to this Board that it has had no viable prior offers of assistance. This could not be farther from the truth. ANTDC/CAC has in fact rejected requests from freight customers, and, rejected offers of assistance from numerous potential tourist and passenger carrying companies.

Rather than to explain its refusals to accept customers, and/or, offers of assistance, ANTDC/CAC has so often resorted to obfuscation by closing public meetings, ostensibly to "hold a CAC Board of Directors meeting", that the very newspaper in which it published its sole notice, printed an article, within the past year noting: "Railroad Future Shrouded in Secrecy."

The questions set forth in NYP&N's Offer, and ANTDC/CAC's refusal to answer them, alone Constitute good cause for this Honorable Board to extend time during which it will accept responses and offers, until such time as the business owners and people disaffected by the Applicant's conduct have had full notice, and time, to address this premature, forced, and improper, discontinuance and abandonment proceeding.

As to, whether, NYP&N RR can demonstrate *prima facie* its fiscal responsibility and capacity, it is clear that any efforts made by any committed Agency or NGO, to operate the ESVA rails, at a profit to the Community, will a thousand-fold exceed, the concentrated and determined efforts of ANTDC/CAC to operate at a loss, or abandon the lines.

NYP&N strenuously encourages the Surface Transportation Board to retain and exercise its discretion, and to fully investigate the bald assertions of indigency, and absolute inability to operate, which have been manufactured from whole cloth by Applicant CAC (ANTDC). These are potentially profitable rails, essential to the cultural, educational, and historic heritage of their community, and, so much more so, to the economic development of its people.

Sincerely,

Roger W. Malik (Electronic Signature)

Roger W. Malik

Secretary – NYP&N RR Resurrection, Limited

CC All Persons appearing on the STB Service List for AB1266X, 1267X & 1276X

Certificate of Service

I hereby certify that on this the Fourteenth Day of October, 2019, that I did cause a copy of the foregoing letter was served by U.S. first class mail, postage prepaid, and by e-mail, on the following persons:

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Roger W. Malik (Electronic Signature)

Roger W. Malik

Dated: October 14, 2019