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06/16/2009 03:32 PM

ET-17790
KB
To <Kenneth.Blodgett@stb.dot.gov>
cc "William Matsikoudis" <MatsikoudisW@jcnj.org>, "Joanne Monahan" <Joanne@jcnj.org>, <JCurley@curlaw.com>, "Isabelle Procaccino" <Procaccinol@jcnj.org>
bcc

Subject AB 1676 (Sub no. 1189X), Conrail – Ab ex – Hudson County, NJ (Harsimus Branch)

Mr. Blodgett:

This email memo is to confirm my telephone message to your tape recorder in response to Victoria Rutson's letter of May 29, 2009 to Mayor Jerramiah Healy of City of Jersey City (my client) asking if the City desired consulting party status in the above-referenced proceeding involving the Harsimus Branch in Jersey City. Practically since Jersey City became aware that Conrail had opened a docket for the Harsimus Branch roughly 18 months ago, the City has requested consulting party status and a fortiori to participate in the section 106 process. If further confirmation is required, this email so confirms it.

Please further be advised that City is and has long been represented by counsel, and that Ms. Rutson, you, or anyone else communicating with the City on behalf of STB should either direct its communication through me, or copy me on the communication. In the case of the May 29 letter, Ms. Rutson sent same only to the Mayor, with a copy to Conrail's in-house legal counsel. Ms. Rutson did not copy me on the letter, even though I have been outside counsel for Jersey City on H Branch related matters for over two years, nor did Ms. Rutson copy Mr. Matsikoudis or Ms. Monahan, in-house counsel for the City. The May 29 letter purports to be time-sensitive, in that it requests a response by June 15. Because the letter was directed only to the Mayor, and not to any of the City's representatives, least of all counsel of record, no relevant representative received the letter until June 16. Especially is Section of Env. Analysis is sending out something that is time sensitive, as your letter purports to be, SEA needs to send it or copy it to me, unless you can cite me to a regulation otherwise.

Since the City has long sought to participate in application of section 106 to this, the letter asking if we did is superfluous, if a bit unnerving in that it seems to be time-sensitive and might be construed as an attempt to somehow cut off our rights previously requested numerous times.

Nothing herein should be construed as acceptance that the section 106 process envisioned by the agency is or will be meaningful and appropriate. City reserves all its positions, including its position that NHPA section 110(k) applies, and that there has been foreclosure in the circumstances.