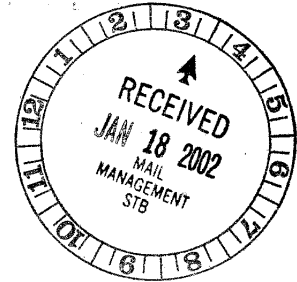


BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

204467

STB Docket AB-No. 596



NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, ACTING ON
BEHALF OF THE CITY OF NEW YORK, NEW YORK ---
ADVERSE ABANDONMENT OF RAIL LINE AND FACILITIES
OPERATED BY THE NEW YORK CROSS HARBOR RAILROAD, INC.
IN BROOKLYN, NEW YORK

PROTEST OF
NEW YORK CROSS HARBOR RAILROAD

ENTERED
Office of the Secretary
JAN 18 2002
Part of
Public Record

Respectfully submitted,
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Harbor Railroad

Date due: January 18, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket AB-No. 596



NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, ACTING ON
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I. INTRODUCTION

On December 4, 2001, the New York City Economic Development Corporation, purporting to act on behalf of the City of New York, filed an Application¹ with the Board to compel the abandonment of a rail line and facilities located at Brooklyn, NY,² and operated under lease by New York Cross Harbor Railroad. ("NYCH"). NYCH vigorously opposes NYCEDC's action which it filed in support of its efforts to evict NYCH from this property in a civil court filed in Kings County, NY.

NYCH will show in this Protest that NYCEDC's

¹ Supplemented on December 10, 2001.

² The facilities include the Bush Terminal Yards (also known as the "First Avenue Yards") and the floatbridge and related tracks at the Harborside Industrial Center (also known as the "Brooklyn Army Terminal").

abandonment proposal is motivated primarily by animosity towards past and present NYCH management rather than any reasons of public convenience and necessity. NYCH will point out that NYCEDC's Application fails to make clear the real reason for its actions, whether based upon alleged past illegal acts of NYCH's former officers and directors or simply a desire to remove railroad trackage and facilities from NYCEDC-owned property so it can be converted to a "higher" use. NYCH will establish that its shippers clearly support and need continued rail service using the subject rail facilities. NYCH will demonstrate that shippers' use of NYCH and the subject facilities is increasing, that alternative rail routings are unavailable and/or economically unfeasible, that NYCH's operations are becoming profitable, and the loss of these facilities will have a devastating effect on NYCH's financial position. Finally, NYCH will show that abandonment will terminate NYCH's service to its Brooklyn customers causing economic hardship and diversion of traffic to other less environmentally benign transportation modes, resulting in at least one business closure. Accordingly, NYCH requests that the Board deny NYCEDC's application for failure to prove that the public convenience and necessity permits or requires involuntary abandonment of the subject facilities.

II.

BACKGROUND

NYCH was originally established in 1983 by several investors who acquired the assets and operations of the former Brooklyn Eastern District Terminal Railroad and the New York Dock Railway.³ At the time of that acquisition NYCH operated the last car float service in the New York Metropolitan Area floating freight cars from two terminals in Brooklyn⁴ to the Greenville floatbridge then owned by Consolidated Rail Corporation ("Conrail") in Jersey City, NJ. During the intervening 18 years, NYCH has undergone no fewer than three major ownership and management changes while Conrail, which transferred the Greenville facilities to NYCH in 1993, was acquired by and divided between CSX Transportation and Norfolk Southern Railway. In addition, NYCH's "friendly connection" -- the Long Island Rail Road -- transferred its freight franchise to a private, investor-owned entity, the New York & Atlantic Railway ("NY&A").

Historically, Brooklyn Eastern District Terminal/New York Dock Railway and later, NYCH performed two principal functions. First, these companies provided local freight service

³ Finance Docket No. 30183, New York Cross Harbor Terminal Corp.-Exemption for Operation and Exemption of Securities (July 15, 1983).

⁴ The 65th Street Yard which NYCEDC owns and proposes to restore to active service and the subject facility.

to rail customers located on the Brooklyn waterfront. These railroads moved inbound or outbound traffic to the national rail system by floating these cars across New York Harbor using company-owned carfloats and barges or by interchanging with the Long Island Rail Road near the 65th Street Yard.⁵ Second, these railroads performed an important overhead traffic function by moving traffic to or from points on Long Island⁶ to points south or west using the cross harbor routing.

Today, NYCH still continues to perform these functions as well as to develop some local business at its Greenville Yard in Jersey City. However, as NYCH will demonstrate, the loss of the subject facilities caused by a grant of NYCEDC's application will deprive NYCH of its ability to move local and overhead traffic from Brooklyn to mainland New Jersey. NYCEDC's suggestions aside, NYCH does not have the right to use any alternate facilities permitting it to continue its cross harbor routing. Accordingly, a grant of NYCEDC's application could effectively put NYCH out of business because its remaining

⁵ The Long Island Rail Road moved them to or from the Conrail interchange at Fresh Pond, Jct., in Queens County, NY. Conrail then moved this traffic via the Hudson Division (along the East Side of the Hudson River) to or from its Selkirk classification yard near Albany.

⁶ The attached map (Attachment I) suggests that NYCH or its predecessors could also handle overhead traffic between New England and points south; however, Conrail effectively eliminated this route option. NYCH is trying to stimulate traffic movements on this route.

traffic may be too small to sustain the company.

III. PROCEDURAL HISTORY

On November 2, 2001, NYCEDC initiated actions leading to the filing of its Application. First, it filed a Notice of Intent indicating that it would file an abandonment application "on or before December 2, 2001." Simultaneously, it sought a waiver of certain Board regulations applicable to abandonment applications. NYCH replied to the waiver petition asking that certain requests be denied. Thereafter, on November 13, 2001, NYCEDC submitted the required Environmental and Historic Report.

On December 3, 2001, the Board served an order granting some of NYCEDC's waiver requests but denying others.⁷ After December 2 came and went without any filing, NYCEDC finally submitted its Application on December 4 accompanied by a "Memorandum of Support"⁸ and a "Petition for Extension of Time."⁹

⁷ Specifically, the Board granted waivers of 49 CFR 1152.10-4 and 49 CFR 1152.24(e)(1) pertaining to system diagram maps, 49 CFR 1152.20(a)(3) regarding notices, 49 CFR 1152.22 and 49 CFR Subpart D pertaining to the content of the application, and 49 CFR 1152.24(c), (e)(1), and (f) governing the filing and service of applications. The Board denied waivers as to 49 CFR 1152.20(a)(4) involving publication requirements and 49 CFR 1152.22(e)(3) and (4) regarding rural and community impact.

⁸ Hereafter identified as "the Memorandum"

⁹ NYCEDC asked that the Board excuse its failure to file the Application within the 15 to 30 day "window" required by 49 CFR 1152.20(a)(4) because of "the intervention of the Thanksgiving holiday, coupled with technical difficulties encountered in the production of the attached materials, prevented counsel from completing the necessary submissions in

On December 10, NYCEDC filed a "Supplement" to cure the deficiencies in its Application. On December 17, well within the time for objecting to deficiencies in the application, NYCH moved to reject on procedural grounds the Notice of Intent, Application, and Supplement and replied to the extension request. On December 21, 2001, the Board served a decision of December 14, 2001, accepting NYCEDC's Application, six days in advance of the date specified by the Board's regulations for issuing such acceptances.¹⁰

IV. ARGUMENT

As a preliminary procedural matter, NYCH renews and preserves for possible appeal the arguments asserted in its Motion to Reject the Notice of Intent, Adverse Abandonment Application, and Supplement to Application, and Reply to Petition for Extension filed on December 17, 2001. Simply stated, the Board's failure to take the full 20 day period¹¹ in what it knew would be an opposed proceeding to consider and decide procedural matters was highly prejudicial to NYCH and protesting shippers. That timeframe is supposed to give members of the public an

sufficient time for filing the Application and supporting memorandum..."

¹⁰ The regulations provide that the Board shall issue a decision accepting or rejecting the application 20 days after filing. 49 CFR 1152.24(e)(2).

¹¹ 10 days elapsed between the December 4 filing date and the December 14 decision date.

opportunity to bring to the Board's attention any significant deficiencies. The December 14 decision date prejudiced NYCH and other protestants by cutting substantially their time for reviewing the application and bringing any deficiencies to the Board's attention.

In adverse abandonment proceedings, the Board has held that the primary question to be resolved is whether there exists a sufficient public interest in operation of the subject rail line to merit continued oversight by the Board. More specifically, the issue is whether the present or future public convenience and necessity requires or permits the proposed abandonment. In making that finding, the Board considers the impact of the proposed abandonment on the community and the customers. As the moving party, it is the applicant -- here NYCEDC -- which has the burden of demonstrating that the public convenience and necessity requires or permits the abandonment. Any efforts to remove the carrier from the line must await that finding by the Board. Cf., STB Docket No. AB-103 (Sub-No. 14), The Kansas City Southern Railway Company -- Adverse Discontinuance Application -- A Line of Arkansas And Missouri Railroad Company (slip op. served March 26, 1999 at 6) (cited as "A&M") and cases cited therein. In implementing that standard, the Board considers the relative burdens that continuation and cessation of service would have on the involved carrier [here

NYCH], on the owner-lessor of the line [NYCEDC], and on the public. See, STB Docket No. AB-469, Jacksonville Port Authority-Adverse Discontinuance-In Duval County, FL (served July 17, 1996, cited in A&M).

The Board (and the Interstate Commerce Commission before it) have denied adverse abandonment and discontinuance requests where the action is sought to remove an impediment to a State or local governmental project, where shipper opposition establishes a potential for continued rail operations, and where the rail carrier has taken reasonable steps to attract traffic. See, Western Stock Show Assn.-Aban. Exemption-In Denver, CO, 1 S.T.B. 113, 131 (1996) and cases cited therein. The Board exercises its oversight role to provide the public with a degree of protection against unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. Id. at 7. The Board has held that issues such as reduced competition, increased transit times, and increased freight costs are the very sort of issues which are germane to a consideration of the application. Id.

Based upon this analysis, the Board should deny NYCEDC's application for failure to carry its public convenience and necessity burden of proof. NYCH has searched NYCEDC's application and supporting papers to ascertain the basis for the drastic relief it seeks. It cannot determine whether the basis

for NYCEDC's eviction efforts and this abandonment proceeding is certain alleged misdeeds by former NYCH officials or a desire to abandon and salvage trackage along the Brooklyn waterfront so the property can be redeveloped for some higher and more lucrative use. Rather NYCEDC's abandonment request appears to be an application in search of a cause. Clearly, Congress did not contemplate the use of the Board's abandonment procedures by a party with an ambiguous agenda. NYCEDC has not carried its burden of proof.

To demonstrate the impact of NYCEDC's proposal on the public, NYCH tenders the verified statement of its President, Ronald W. Bridges. NYCH also understands that most of its Brooklyn customers have retained transportation counsel to file a protest to this application. Mr. Bridges' testimony first addresses NYCEDC's justifications for the abandonment, as contained in the Memorandum and the declaration of NYCEDC Executive Vice President Seth O. Kaye filed with the Application. Then he discusses the effects of the Application on the railroad, the customers, and the public.

A. In general

Since assuming control over the railroad in September 2000, NYCH's new management has attempted to resolve many problems which it inherited from prior administrations. In particular, NYCH has attempted to meet with NYCEDC generally and

Seth Kaye and his boss Michael Carey specifically.

Unfortunately, NYCEDC appears to have pursued a policy of avoiding contact whenever NYCH has called.

1. NYCH's alleged pollution

NYCEDC urges that NYCH's pollution of the subject rail facilities shows that it cannot be trusted to be a "careful steward of the land on the City's waterfront." Notice of Intent at 3. Assuming these allegations to be true, NYCH stands accused of polluting City-owned property in two respects. First, at certain unspecified dates in 1992, NYCH employees buried drums containing pesticides and other known carcinogens on the right of way in violation of state and federal laws. Second, at some unidentified date, NYCH employees in violation of state and federal laws dumped waste oil and other used petroleum products into the ground in and around the railroad's locomotive roundhouse. Kaye Declaration at paras. 10-16.

NYCH takes no position regarding these misdeeds and pending civil litigation except to say that present management deplores these actions, if true. Moreover, NYCH notes that the statute of limitations may very well have run on these alleged acts and that NYCEDC's abandonment application is premised on mere allegations, rather than judicial findings. Amazingly, although the City filed its litigation in 1998, the case is not scheduled for trial. In any event, environmental claims are

outside the Board's jurisdiction.

2. Failure to Comply with City Building Codes

NYCEDC's Seth Kaye asserts as another justification in support of the abandonment, NYCH's failure to maintain an operative sprinkler system in its headquarters building in violation of city fire codes. Kaye Declaration, paras. 17-20.

Upon learning of the pending violation and proceedings brought by NYCEDC to secure compliance, NYCH took the remedial actions described by Mr. Bridges in his verified statement. NYCH remains committed to resolving this problem and working with NYCEDC as a good tenant but, as Mr. Bridges relates, NYCEDC has spurned those efforts to date. Bridges VS at 2.

3. Financial Instability

As its final justification for the abandonment, NYCEDC asserts 17 years of financial delinquency to NYCEDC. Kaye Declaration at paras. 21-23. Yet, NYCEDC in its Memorandum admits that NYCH is current in its rental payments to NYCEDC. Memorandum at 9. In fact, NYCEDC admits the only reason for its concern is its fear, based upon the statement that NYCH lost two million dollars per year from 1996 to 1999, that it might not be able to stay current in its obligations to the City in the future. Memorandum at 9. The Board should not grant NYCEDC's abandonment application based upon such speculation.

NYCEDC misinterprets these financial statements. NYCH

did not lose two million dollars per year from railroad operations. Rather, as Mr. Bridges explains in his statement, these figures represent a series of one time financial write-offs. As evidence of its financial responsibility, NYCH tenders as Exhibit A, page 3, appended to Mr. Bridges' testimony its consolidated statement of cash flows for the nine months ending September 30, 2000, and 2001. This statement shows that NYCH has now achieved a positive cash flow and is meeting its current obligations as they become due. Bridges VS at 4-5. Under NYCH's new management team, the railroad is aggressively pursuing business opportunities which will, it believes, enable it to become a financially stable, profitable carrier. A grant of NYCEDC's application will reverse the sales and marketing initiatives of NYCH's new management team and jeopardize the company's future financial health. Fighting the sort of battles NYCEDC has started will merely divert NYCH's management from rebuilding NYCH as a profitable carrier and ill serve the shipping public.

4. NYCEDC's Real Abandonment Motivation.

There is an old saying that for every action there's the real reason and the one that sounds good. NYCEDC has cited three superficially plausible justifications for its abandonment application. But what NYCH perceives may be the real reason lies buried in NYCEDC's Environmental and Historic Report at pages 4-5

where NYCEDC states:

Once the abandonment is complete and NYCH is no longer using the facilities, NYCEDC and other agencies of the New York City and New York State governments will continue with their current plans for redevelopment of the Brooklyn waterfront.

....
In accordance with the New York City Waterfront Plan and the *Strategic Plan for the Redevelopment of the Port of New York*, it is expected the site will continue to be used for rail purposes, particularly to interface with the planned re-development and expansion of adjacent maritime terminals to further promote water-to-rail movement of cargo and economic revitalization of the Brooklyn waterfront.

If NYCEDC has intended to terminate NYCH as its lease operator of the subject facilities due to some misconduct, it would likely have filed an adverse discontinuance application rather than one for abandonment. The fact that NYCEDC is seeking authority to abandon the underlying trackage suggests that NYCEDC has some ulterior motive. To the extent that NYCEDC may wish to redevelop and expand marine terminals and reconfigure the subject rail facilities to accommodate those changes, there is no reason why NYCEDC could not have approached NYCH in a cooperative and straight up manner. NYCEDC and NYCH could then have filed a notice of exemption under 49 CFR 1152.50 to abandon an out of service rail line where overhead traffic could be handled over another route (assuming one exists). Or NYCEDC and NYCH might have been able to pursue a track relocation project utilizing the

procedures of 49 CFR 1180.2(d)(5).¹² Stated simply, NYCEDC's disingenuous conduct cannot be the basis for granting an abandonment application and denying service to shippers.

B. Impact of the Abandonment on the Shipping Public

NYCH's Ron Bridges addresses the impact of NYCEDC's proposal on the shipping public. Through its filings, NYCEDC suggests that this abandonment will have no impact on the shipping public and NYCH's operations because "NYCEDC...is ensuring that NYCH will have the opportunity to negotiate an arrangement to utilize the float bridge with tracks at the City's 65th Street rail yard upon completion of the new agreement with the designated operator of that facility." Memorandum at 4. In its Environmental Report, NYCEDC states that there is no significant effect on the regional or local transportation system because NYCH will have what it calls "an alternative landing site that allows connection to its current rail rights of way and destination points." See, Environmental Report at pages 4, 5, and 7-9. Indeed, if NYCH is such a poor corporate citizen as NYCEDC makes it out to be, it would be strange for NYCEDC to be offering NYCH the use of the 65th Street terminal!

As Mr. Bridges points out, NYCEDC's "alternative landing site" has two problems. First, NYCEDC is not granting

¹² To take advantage of this procedure NYCEDC would probably have to be regarded as a rail carrier as this regulation only applies to transactions between rail carriers.

NYCH the use of that facility. Rather NYCEDC is "ensuring that NYCH will have the opportunity to negotiate an arrangement to utilize the float bridge with tracks at the City's 65th Street rail yard upon completion of the new agreement with the designated operator of that facility." Memorandum at 4; Bridges VS at 6. NYCEDC's does not reveal the terms and conditions for NYCH's use of the property or convey any carte blanche approval for its use. Bridges VS at 6.

Second, and more significantly, NYCH access to the 65th Street facility does not allow NYCH to handle cross harbor traffic. NYCH attached as an exhibit to Mr. Bridges' statement a map showing the track layout in Brooklyn. Traffic moving to or from NYCH Brooklyn customers must traverse a short segment of trackage owned by the Long Island Rail Road over which NY&A has exclusive operating rights. Direct NYCH access would require trackage rights over NY&A which, NYCH understands, NY&A does not appear to be disposed to give. Although NY&A would likely quote a rate for switching this traffic, NYCH believes that rate would be so high as to make this new routing uneconomic. Bridges VS at 7.

C. The public convenience and necessity does not allow this application to be granted

Past precedent requires a denial of NYCEDC's application for failure to sustain its burden of proof. In certain respects, the Board's decision in Western Stock Show

Assn., supra., is very pertinent. There the applicant sought to abandon certain trackage which traversed real property it owned in Denver, CO, and used by two railroads including one short line railroad (the Denver Terminal Railroad Company, "DTRC"). As here, the applicant and the short line had numerous disputes over financial and liability related matters (specifically, overdue rent payments and insurance coverage in that case). There, as here, several shippers actively used the railroad and supported in the abandonment litigation by filing protests. DTRC asserted that that the operations were profitable, there was no current or imminent operating loss, no track rehabilitation was required, and no opportunity costs were incurred.

Denying the application, the Board emphasized that the third party applicant had failed to sustain its burden to show that the public convenience and necessity permitted the abandonment. The STB stated that it had generally denied adverse applications if there was a potential for continued operations and the carrier had taken reasonable steps to attract traffic. The Board distinguished this case from the usual adverse abandonment or discontinuance proceeding where the line had been out of service for some extended time period, there was no possibility of restoring service or prospects for future shippers, the carrier had shown a consistent pattern of failing

to meet its obligations to its customers and other parties, and the customers supported the discontinuance. Id. At 132.

As in Western Stock Show Assn., supra, NYCH has been providing continuous service to its customers from the date it began operations in 1983 to the present. Mr. Bridges and NYCH's other officers, directors, and investors are confident that the future will bring traffic growth and profitability. NYCH management is working aggressively with both CSX Transportation and Norfolk Southern Railway to develop new sources of business. Several NYCH's customers are so supportive of the railroad that they have chosen to retain counsel and are filing a joint protest to NYCEDC's abandonment application.

In another parallel between these two cases, NYCEDC has refused to meet and negotiate with NYCH's new management. In Western Stock Show Assn., supra, the Board noted that "the parties scarcely communicated with each other before bringing their dispute to a Federal agency," adding "[t]hese are among the many matters that the parties seemingly could have resolved -- or at least demonstrated a substantial effort to resolve - outside of a proceeding before a Federal agency." Id. at 136. NYCH is very mindful of Chairman Morgan's frequent admonition to parties that the Board sits as a body of last resort to resolve problems between parties. The issues in dispute here are commercial issues more appropriate for negotiation, rather than

litigation. NYCH implores the Board to deny the application to force NYCEDC to meet and talk with NYCH representatives.

Granting this application will have an adverse effect upon NYCH and the shipping public. Assuming that NYCH can get rights to use the 65th Street facility on terms as favorable as those which NYCH has at the present subject facility, NYCH would likely experience higher rates and slower transit times due to the need to traverse NY&A's connecting trackage. To the extent that closure of NYCH's existing cross harbor route forces traffic to move via NY&A and Selkirk, this route would significantly increase transit times for southern and western traffic while denying customers the competitive access to Norfolk Southern Railway they presently enjoy at Greenville. A more likely scenario would involve the diversion of rail traffic to truck, resulting in thousands of truckloads of new traffic on already congested and polluted City streets and highways. Bridges VS at 7. Each of these impacts translates into poorer customer service and ultimately traffic loss and an adverse impact on the NYCH's ability to continue as an ongoing business.

NYCH understands that some of its customers are filing a joint protest wherein they assert that the abandonment will likely force them to shift from rail to truck transportation. That diversion will not only increase their transportation costs but increase traffic congestion and air pollution in New York

City, an area notable for its nonattainment status under federal environmental laws. NYCH also understands that one of its customers, American Warehouse, Inc., believes that it could not remain in business without rail service. Such a business closure is the very sort of adverse community impact which requires the Board to reject NYCEDC's abandonment proposal.

Cf., Lamoille County R. Co. v. ICC, 711 F.2d 295, 310-3 (D.C. Cir. 1983) (where the Court noted that the ICC has in the past justified its denial of railroad abandonments on the fact that rail customers might be forced out of business).

V.

CONCLUSION

NYCEDC's adverse abandonment application should be denied for failure to carry its burden of proving that the public convenience and necessity require or permit the abandonment. NYCH has shown that its customers depend on it for rail service, that a grant of the application would result in termination of service, and that these customers would be adversely affected. One customer has indicated that it would be forced out of business. Accordingly, NYCH requests that the Board issue an order denying this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

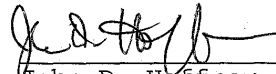
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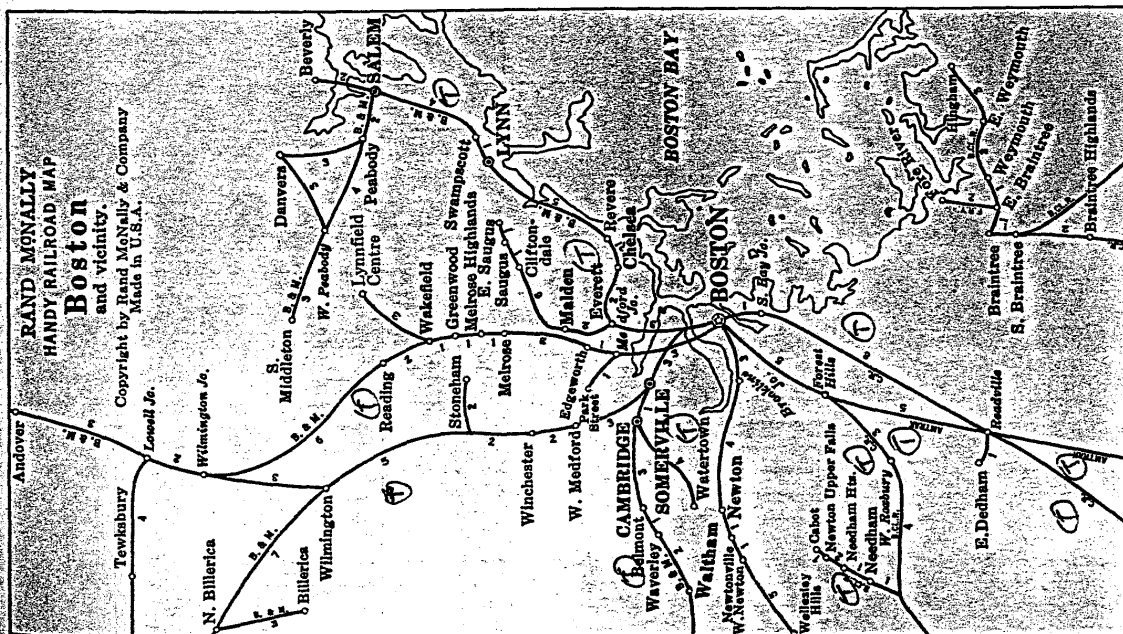
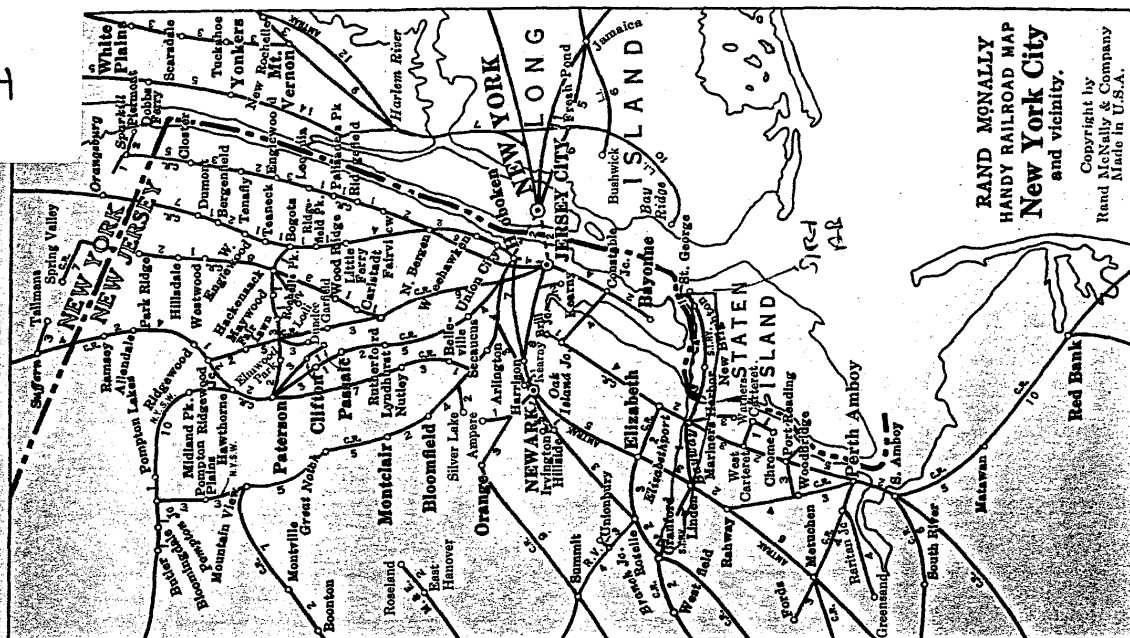
Date due: January 18, 2002

CERTIFICATE OF SERVICE

I, John D. Heffner, do hereby certify that I have this 18th day of January 2002 mailed a copy of the foregoing Protest of New York Cross Harbor Railroad to all parties in this proceeding first class United States mail on all parties to this proceeding as well as on counsel for the New York City Economic Development Corporation by messenger.


John D. Heffner

Attach ment
I





VERIFIED STATEMENT
OF RONALD W. BRIDGES

Ronald W. Bridges, being duly sworn, deposes and states as follows:

1. My name is Ronald W. Bridges. I am President of the New York Cross Harbor Railroad ("NYCH"), a class III short line railroad operating in the New York Metropolitan Area. My office address is 4302 First Avenue, Brooklyn, NY 11232.
2. Before joining NYCH in September 2000, I spent 30 years in the railroad industry starting with the former Erie-Lackawanna Railway in 1970. In 1976, I joined Consolidated Rail Corporation ("Conrail") as a division sales manager and rose up through its management ranks. I left Conrail at the time Norfolk Southern Railway and CSX Transportation acquired Conrail's assets and assumed its operations. By that time I held the position of Assistant Vice President of Marketing and Sales.
3. Since my arrival at NYCH I have been involved in almost every aspect of the railroad's operations, engineering, sales and marketing, pricing, and finances. Upon my arrival, I faced numerous challenges. On the positive side, the Conrail split up presented NYCH with numerous exciting business opportunities for expanding the railroad's traffic and revenue base. Moreover, the railroad had a good revenue base with strong shipper support. But on the negative side, I found a financially distressed company engaged in numerous disputes with the City of New York.

4. My work was cut out for me. I immediately set to build strong relationships with all of NYCH's connecting carriers, attract more freight from existing customers, and locate new customers. With a few minor exceptions, I have been successful in meeting those goals. Getting along with the City of New York, especially the New York City Economic Development Corporation ("NYCEDC") and the New York & Atlantic Railway ("NY&A"), a class III short line connecting railroad, turned out to be more of a challenge.

5. In view of the longtime contentious relationship between NYCH and NYCEDC, I made a courtesy call on that agency a top priority. To my astonishment, NYCEDC refused to meet with me to discuss ongoing problems.

6. I have reviewed each of the filings submitted by the NYCEDC in this proceeding and want to offer the following observations. NYCEDC appears to preface its abandonment application on three grounds. First, it asserts that NYCH polluted the Bush Terminal rail facilities owned by NYCEDC and used by NYCH¹ by dumping carcinogens and waste oil. Second, NYCEDC states that NYCH in contravention of a city order failed to install a sprinkler system in its administration building.

¹ These facilities include the Bush Terminal Yards (also known as the First Avenue Yards) and the floatbridge and related tracks at the Harborside Industrial Center (also known as the Brooklyn Army Terminal).

Finally, NYCEDC notes that NYCH has not paid its rent to NYCEDC in the past and, despite being current on its payments at this time, fears that NYCH may not pay its obligations in the future due to its weak financial status. Notwithstanding NYCEDC's desire to evict NYCH from the premises for its poor "stewardship" of NYCEDC's property, that agency indicates that NYCH will have access to NYCEDC's recently rebuilt 65st Street Yard as an alternate facility under unspecified terms and conditions.

7. Regarding the alleged pollution, current NYCH management does not condone the actions of former NYCH officials to the extent these allegations might be true. My management team is committed to being a good corporate citizen and operating the railroad in a clean, safe manner. To the extent that NYCH may have conducted itself badly in the past, I am committed to righting those wrongs. But our attempts to meet with NYCEDC have, to date, been rebuffed or ignored. Moreover, I should note that the alleged dumping of pesticides goes back almost 10 years, perhaps beyond the statute of limitations on environmental claims. Current NYCH management and its customers should not be held responsible for these actions.

8. As far as the sprinkler system is concerned, NYCH hired and paid a NYCEDC approved contractor to perform needed repairs. The contractor refused to perform the repairs due to a dispute with NYCEDC. NYCEDC continues to pressure NYCH to secure another

contractor to replace the present and recently installed system notwithstanding the fact that NYCH paid the first contractor to complete such work (it is substantially complete). NYCH has not been able to secure financing to comply with NYCEDC's demand.

9. Regarding NYCH's financial health, I am attaching to my statement as an exhibit a financial statement (identified as Exhibit A, page 3) which shows that NYCH is beginning to generate a modest positive cash flow and has been meeting current expenses as they become due. NYCEDC erroneously cites the financial statement of New York Regional Rail,² the publicly traded parent company of NYCH, as evidence of NYCH's financial weakness covering the period 1996-9. These statements do not properly reflect the results of railroad operations as they include expenses for two nonoperating companies (New York Regional Rail and CH Partners) and a trucking company (JS Transportation). Rather they depict certain extraordinary, noncash items which relate to New York Regional Rail, primarily for charges relating to stock, warrant, and/or option issuances. The net cash used in operating activities contained on New York Regional Rail's Form 10-SB submitted to the SEC for 1996-9 cited by NYCEDC shows (\$498,540, (\$1,289,622), and (\$1,071,001), respectively. These figures reflect operating losses for those years, as adjusted for

² New York Regional Rail is a transportation holding company consisting three subsidiary corporations, NYCH, CH Partners, and JS Transportation.

various noncash items. Now looking at New York Regional Rail's Form 10-KSB submitted to the STB for 1999 and 2000, we see net cash used in operating activities of (\$1,582,800) and (\$450,021), respectively. Finally, referring to New York Regional Rail's Form 10-QSB submitted to the SEC for the 9 months period ending September 30, 2000, and September 30, 2001, the net cash provided by or used in operating activities are (\$459,539) and a positive \$97,573, respectively. These figures are especially significant because they reflect results from NYCH's new management initiatives. If you deduct the 2000 full year net cash used figure (a negative \$450,021) from a negative \$459,539 for the 9 months period, you will find a positive cash contribution of about \$9,000 for the last quarter of that year. This was the first full quarter of new management's involvement. Looking at the 9 months period ending September 30, 2001, cash provided by operations was a positive \$97,573. NYCH (and through it, New York Regional Rail) have achieved these results despite the loss of three material customers (two of the losses are expected to be temporary) during the year.³

10. I am confident that NYCH's recent marketing initiatives along with some new business from existing customers will make NYCH profitable for the first time in years. However, a grant of

³ Through its marketing activities NYCH was able to attract two new customers.

NYCEDC's application will erase those gains by cutting off NYCH from valuable traffic from customers located along the Brooklyn waterfront.

11. NYCEDC would have the Board believe that it will provide NYCH with what it calls "an alternative landing site that allows connection to its current rail rights of way and destination points." Unfortunately, nothing could be further from the truth. While NYCEDC has indicated that it will make the 65th Street facilities available for NYCH, it has not indicated the terms and conditions that will apply. Also while NYCEDC will own that facility, Canadian Pacific Railway will operate the facility. Accordingly, NYCH must reach an agreement with that railroad as well as with NYCEDC.

12. Access to the 65th Street facility does not resolve the rail service problem. Several of our customers are located adjacent to the Bush Terminal Yard and receive service from a siding off the yard.⁴ Elimination of the yard will eliminate rail service for those customers. Several customers have advised that transloading at the 65th Street facility is not cost effective and they will be forced to use truck transportation. One customer (American Warehouse, Inc.) has indicated that it would be forced out of business.

13. I am attaching as an exhibit (Exhibit B) to my

⁴ Interdynamics, Inc. and Franklin Poly Corp.

statement a map of the rail trackage to be traversed from the NYCH's customers to the 65th Street facility. In each case, NYCH lacks direct access to 65th Street. To reach the 65th Street facility, NYCH's engine must first head east pulling its train until it connects to NY&A's mainline. Continuing to head east, the engine must then traverse a short segment of NY&A's mainline to clear the NY&A/NYCH switch before it can begin to push cars west to reach the 65th Street facility. Informally, NYCH has learned that NY&A is not inclined to allow NYCH to use NY&A's trackage rights for that short distance to gain access to the 65th Street facility. I anticipate that the switching fee which NY&A would charge NYCH would be so high as to make the routing uneconomic, thus terminating rail service to these customers. A more likely scenario would involve the diversion of rail traffic to truck, resulting in thousands of truckloads of new traffic on already congested and polluted City streets and highways.

14. In conclusion, a grant of NYCEDC's would have a tremendous adverse effect on NYCH and the customers who depend upon it. These customers would likely lose all rail service and NYCH would lose their business. That revenue loss could be a blow so large as to threaten the very existence of NYCH for its remaining customers as well as for the cross harbor car ferry service.



VERIFICATION

STATE OF)
) SS
CITY OF)

_____, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.

Russell W. Bridges

Subscribed and sworn to before me, a Notary Public, in and for the City of Wills, in the State of AR, this 1st day of January

Linda L. Medford
Notary Public

My Commission expires:

8-31-2003



AB No. 596
EX A.
P. 1

NEW YORK REGIONAL RAIL CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
DECEMBER 31,

	1998	1997	1996
	-----	-----	-----
	RESTATED - SEE NOTE Q		
Increase (decrease) in cash			
Cash flows from operating activities:			
Net loss	\$(2,040,032)	\$(2,067,939)	\$(1,990,707)
Adjustments to reconcile net loss to net cash used in operating activities			
Depreciation and amortization	178,232	217,369	212,479
Write-off of investment in EDTI	--	--	750,000
Loss on disposition of equipment	(110,000)	167,095	--
Common stock and options issued for services	75,311	273,793	335,003
Beneficial conversion feature of convertible debt	444,150	174,552	--
Other non-cash charges	63,597	36,334	11,325
Changes in operating assets and liabilities:			
Accounts receivable	(20,529)	(46,681)	283,120
Other current assets	9,229	10,010	21,029
Decrease in other assets	1,500	92,000	(8,259)
Accounts payable	58,368	(228,176)	167,380
Accrued expenses	349,573	289,279	(739,569)
Payroll taxes payable	(311,605)	(222,417)	444,499
Deferred rent payable	11,205	15,159	15,160
Total adjustments	969,031	778,317	1,492,167
Net cash used in operating activities	(1,071,001)	(1,289,622)	(498,540)
Cash flows from investing activities:			
Purchase of property, plant and equipment	(1,759)	(49,020)	--
Investment in EDTI	--	--	(250,000)
Net cash used in investing activities	(1,759)	(49,020)	(250,000)
Cash flows from financing activities:			
Increase in convertible promissory notes - others	325,000	264,400	--
Increase in convertible promissory notes - related parties	899,703	244,300	--
(Payments of) receipts from other short-term debt - related parties	(41,549)	40,452	26,900
(Payments of) receipts from other short-term debt - others	(114,532)	255,913	(46,437)
Proceeds from issuance of common stock	--	--	750,401
Proceeds from issuance of convertible preferred stock	--	484,600	25,000
Net cash provided by financing activities	1,068,622	1,289,665	755,864
Net increase (decrease) in cash	(4,138)	(48,977)	7,324
Cash at beginning of year	12,429	61,406	54,082
Cash at end of year	\$ 8,291	\$ 12,429	\$ 61,406

AB.No. 596

NEW YORK REGIONAL RAIL CORPORATION AND AFFILIATES

STATEMENT OF CASH FLOWS
(RESTATED)

EX A

P. 2

FOR THE YEARS ENDED
DECEMBER 31,

	2000	1999
Increase in cash and cash equivalents		
Cash flows from operating activities:		
Net loss	\$(1,686,354)	(\$5,372,351)
Adjustments to reconcile net loss to net cash		
(used in) operating activities:		
Depreciation	444,001	307,000
Amortization of goodwill	42,750	11,325
Loss on disposal of fixed assets	365,002	--
Stock issued for services	143,480	189,139
Beneficial conversion feature of convertible debt	17,333	1,395,000
Warrants and options issued for debt	717,038	2,166,923
Minority interest in subsidiary earnings	36,127	49,107
Changes in operating assets and liabilities:		
Accounts receivable	(298,472)	(543,705)
Other current assets	5,015	(35,520)
Other assets	143,058	(342,000)
Accounts payable	(684,578)	1,125,886
Accrued expenses	102,749	(97,851)
Payroll taxes payable	195,580	(443,003)
Deferred rent	7,250	7,250
Total adjustments	1,236,333	3,789,551
Net cash used in operating activities	(450,021)	(1,582,800)
Cash flows from investing activities:		
Purchase of property, plant and equipment	(359,603)	(70,251)
Net cash used in investing activities	359,603	(70,251)
Cash flows from financing activities:		
Long term debt	522,500	736,177
Convertible notes - other	115,149	881,356
Convertible notes - related party	54,851	598,532
Other current debt - related party	(3,740)	(64,993)
Other current debt - other	(53,271)	(372,468)
Proceeds from issuance of capital stock for options	12,231	69,130
Net cash provided by financing activities	647,720	1,847,734
Net decrease in cash and cash equivalents	(161,904)	194,683
Cash at beginning of year	202,974	8,291
Cash and cash equivalents at end of year	\$41,070	\$202,974
Supplemental cash flow information:		
Cash paid during the year for:		
Interest	--	7,868
Income taxes	--	--
Non-Cash Transactions		
Common shares issued in exchange for interest in subsidiary	236,698	600,000
Common shares issued for reduction of subsidiary debt	--	1,000,000
Conversion of debt into common stock	1,022,861	8,316,036
Conversion of debt into convertible preferred series C	500,000	--
Debt issued for supplies	50,000	--
Common shares issued in exchange for accrued interest	10,000	--
Purchase of equipment for debt:		
Equipment acquired	--	901,500
Liabilities assumed	--	901,500

See notes to consolidated financial statements.

AB No. 596

Ex. 17
p. 3NEW YORK RAIL CORPORATION AND AFFILIATES
CONSOLIDATED STATEMENT OF CASH FLOWS
(Unaudited)Nine Months Ended September 30,
2001 2000

CASH FLOWS FROM OPERATING ACTIVITIES:

		(Restated)
Net loss	\$ (585,805)	\$ (1,081,266)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation and amortization	415,458	336,665
Non-cash compensation	180,950	-
Bad debt expense	315,278	-
Minority interest in subsidiary	(85,234)	145,989
Warrants and options issued for debt	-	717,038
Beneficial conversion feature	-	17,333
Common stock issued for services	-	143,480
Changes in assets and liabilities:		
(Increase) in accounts receivable	(315,810)	(189,451)
(Increase)/decrease in prepaid expenses	67,557	(12,727)
(Increase) decrease in other assets	30,325	154,387
Increase (decrease) in accounts payable	(111,478)	(728,820)
Increase (decrease) in accrued expenses	50,527	-
Increase (decrease) in payroll taxes payable	117,152	35,083
Increase in deferred rent	18,653	2,750
	683,378	(621,727)
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES	97,573	(459,539)
CASH FLOWS FROM INVESTING ACTIVITIES		
Loss on disposal of fixed assets	49,695	-
Cash overdraft	41,350	-
Capital expenditures	(120,617)	(359,603)
NET CASH USED IN INVESTING ACTIVITIES	(29,572)	(359,603)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from notes payable	-	522,500
Payment of long term debt	(109,071)	(1,308)
Receipts from convertible notes - other	-	170,000
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES	(109,071)	703,423
NET INCREASE/ (DECREASE) IN CASH	(41,070)	(115,719)
CASH - BEGINNING OF PERIOD	41,070	202,974
CASH - END OF PERIOD	\$ -	\$ 87,255

The accompanying notes are an integral
part of the financial statements.

AB No. 596

Ex. B

