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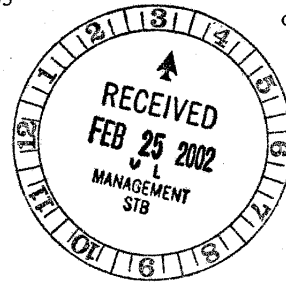
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204846

February 25, 2002



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

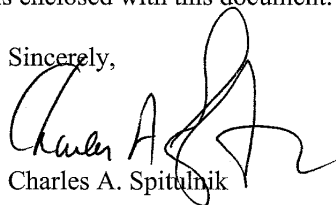
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Public Record

Re: *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, Docket No. AB No. 596*

Dear Sir:

I am enclosing an original and ten (10) copies of the Reply of New York City Economic Development Corporation, Acting on Behalf of the City of New York, New York to Motion of New York Cross Harbor Railroad to Strike, for filing in the above-referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5" diskette is enclosed with this document.

Sincerely,


Charles A. Spitulnik

Enclosures

cc: All parties on the Certificate of Service

**Before the
Surface Transportation Board**

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**

**REPLY OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,
ACTING ON BEHALF OF THE CITY OF NEW YORK, NEW YORK TO
MOTION OF NEW YORK CROSS HARBOR RAILROAD TO STRIKE**

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Counsel for New York City Economic
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of the City of New York, New York

Dated: February 25, 2002

Before the
Surface Transportation Board

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.
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**REPLY OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,
ACTING ON BEHALF OF THE CITY OF NEW YORK, NEW YORK TO
MOTION OF NEW YORK CROSS HARBOR RAILROAD TO STRIKE**

New York City Economic Development Corporation, acting on behalf of the City of New York, New York ("NYCEDC") pursuant to 49 C.F.R. 1104.13 (a) and through counsel, hereby replies in opposition to the Motion of New York Cross Harbor Railroad ("NYCH") To Strike ("Motion to Strike"). The Motion to Strike should be denied.

I. Introduction

NYCEDC filed an Application for Adverse Abandonment on December 4, 2001. On December 21, 2001 the Board set a procedural schedule ("Briefing Schedule") in which "any interested person" could "file written comments or protests (including protestant's entire opposition case) by January 18, 2002" ("Abandonment Protests and Comments"). *See* STB Docket No. AB-596, *New York City Economic Development Corporation – Adverse Abandonment – New York Cross Harbor Railroad, Inc., in New York, NY* (served December 21, 2001). The Briefing Schedule expressly provided NYCEDC with an opportunity to respond to any Abandonment Protests and Comments by allowing it to file a reply on or before February 4,

2002. *Id.* As required by the Briefing Schedule, NYCH and certain shippers filed their protests on January 18, 2002, and NYCEDC filed its reply to those protests on February 4, 2002.

Now, NYCH moves to strike “as new matter portions of the evidence and argument submitted by NYCEDC in the body of NYCEDC’s Reply to NYCH’s Protest” (“NYCEDC Reply”). *See Motion to Strike* at p 1-2. Specifically, NYCH alleges that NYCEDC “used its Reply to introduce evidence on two points never raised before in these proceedings.” *Id.* at 3. Those points, NYCH asserts, are that: 1) NYCEDC has failed to maintain the tracks and facilities it leases from NYCEDC; and 2) NYCEDC introduced a memorandum from Turner Construction Company to NYCEDC indicating that NYCH has placed on “the right of way an unauthorized and allegedly unsafe unloading platform.” *Id.* at 4. NYCH’s Motion to Strike should be denied because NYCEDC has done nothing wrong. Using the opportunity provided by the Briefing Schedule, NYCEDC properly responded to points NYCH and the shippers raised in their protests.

II. Argument

In considering NYCH’s arguments, it is important to focus upon the framework within which the information NYCH is seeking to strike is introduced. That framework is a Reply to NYCH’s Protest. In the NYCH Protest, Ron W. Bridges, President of NYCH states that he became president of NYCH in September of 2000. *See NYCH Protest* at Bridges VS at p.1. He also states that: “My management team is committed to being a good corporate citizen and operating the railroad in a clean safe manner.” *See NYCH Protest* at Bridges VS p. 3. The two points that NYCH is now seeking to strike respond directly to that. They relate to incidents that have occurred during Mr. Bridges’ reign as president, specifically to the manner in which Mr.

Bridges and his team have operated the railroad and the property that is the subject of this proceeding during that time.

First, NYCH's continuing failure to maintain the tracks and facilities has contributed to the current deteriorated state of the 51st Street Float Bridge. This deterioration did not begin when Mr. Bridges arrived, but it certainly has continued to the present day and the pre-existing problems have not been fixed. While the 51st Street Float Bridge has been under the watchful eye of Mr. Bridges' "clean and safe" management team its condition has certainly not improved.

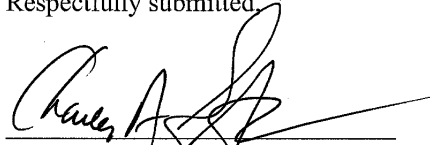
Second, the memorandum from Turner Construction Company to NYCEDC relates to a site visit that took place on May 21, 2001, well after Mr. Bridges became president of NYCH. The memorandum relates to a "temporary loading platform" constructed at the tracks and facilities during Mr. Bridges' presidency and while his management team was "committed to being a good corporate citizen and operating the railroad in a clean safe manner." NYCEDC need not repeat the litany of problems associated with that alleged structure, since the May 21 memorandum details them quite thoroughly. However, the point remains that this memorandum supports NYCEDC's argument that it has no basis to believe that the new regime at NYCH will address the company's long-standing disregard for its obligations under the laws and agreements referred to in NYCEDC's prior filings in this proceeding.

Thus, the items that NYCH seeks to strike are proper replies by NYCEDC to points raised by NYCH in its Protest. The authority NYCH cites in its Motion to Strike does not support its position, but instead confirms the propriety of NYCEDC's submissions. The case NYCH cites at p. 4 of its Motion to Strike states that the "board has consistently held that it will not allow a party to introduce in its reply material which is neither responsive to the issues raised nor the evidence presented previously" (emphasis added). *Motion to Strike* at p. 4 citing STB

Docket No. AB-441 (Sub-No 2x), *SWKR Operating Co. – Abandonment Exemption - - In Cochise County, AZ* (served November 12, 1997). In this case, NYCH raised the issue of its current management team's commitment "to being a good corporate citizen and operating the railroad in a clean safe manner". In response, NYCEDC has properly introduced the evidence relating to the maintenance of the 51st Street Float Bridge and the structure that was the subject of the May 21 memorandum from Turner Construction Company. All of these facts respond to the issue NYCH raised.

Accordingly, NYCH's Motion should be denied in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", with a long horizontal line extending to the right.

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Dated: February 25, 2002.

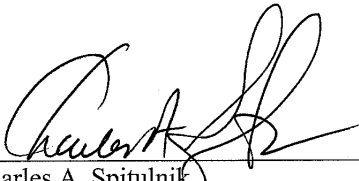
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Reply of New York City Economic Development Corporation, Acting on Behalf of the City of New York, New York to Motion of New York Cross Harbor Railroad to Strike, to be served by hand delivery and first class mail, postage prepaid upon the following:

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9/25/02