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FEE RECEIVED

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ajeffifrah@paulhastings.com

MAY 21 2002

May 21, 2002

SURFACE
TRANSPORTATION BOARD

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001



Re: Surface Transportation Board Docket No. AB-837X The Long Island Rail Road
Company Request for Discontinuance In Garden City, Long Island, New York

Dear Secretary Williams:

In accordance with 49 C.F.R. § 1104.1 *et seq.*, attached please find the original and ten copies of a request for discontinuance filed on behalf of the Long Island Rail Road Company. This filing is identical to that which was filed on May 13, 2002. A check in the amount of \$4,700 is now attached to cover the filing fee in accordance with 49 C.F.R. § 1002. A filing fee waiver request is also included in this packet in accordance with the Board's policy that a filing should be accompanied by the relevant fee and fee waiver request.

This filing has been served on all interested parties in accordance with 49 C.F.R. §§ 1104.12.

Please contact the undersigned with any questions.

FILED

MAY 21 2002

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of the Secretary

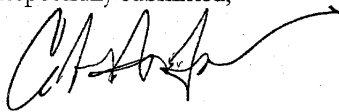
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Part of
Public Record

Paul Hastings

Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001
May 21, 2002
Page 2

Respectfully submitted,



A. Jeff Ifrah
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

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Attachments

cc: Feld Entertainment
1313 Seventeenth Street, East
Palmetto, FL 34221
Attn: J. William Misiura

BEFORE THE SURFACE TRANSPORTATION BOARD

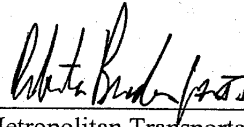
DOCKET NO. AB-837X

THE LONG ISLAND RAIL ROAD COMPANY
REQUEST FOR DISCONTINUANCE
IN GARDEN CITY, LONG ISLAND, NEW YORK

VERIFIED PETITION FOR EXEMPTION

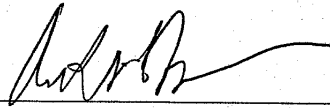
Dated: May 21, 2002

By:



Metropolitan Transportation Authority

Roberta Bender
Deputy General Counsel
347 Madison Avenue
Ninth Floor
New York, New York 10017-3739
Telephone: (212) 878-1044



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Judith Richards Hope
William D. DeGrandis
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Washington, DC 20004-2400
Telephone: (202) 508-9500

Counsel for Metropolitan Transportation
Authority and LIRR

THE LONG ISLAND RAIL ROAD COMPANY

DOCKET NO. AB-837X

**LONG ISLAND RAIL ROAD COMPANY
REQUEST FOR DISCONTINUANCE
IN GARDEN CITY, LONG ISLAND, NEW YORK**

The Long Island Rail Road Company (the "LIRR") hereby petitions the Surface Transportation Board (the "Board"), pursuant to 49 U.S.C. § 10502, to discontinue service over the line of railroad between Milepost 18.8 in Garden City and Milepost 21.0 in Garden City, all in Nassau County, New York (hereafter, the "Garden City Line"). The Metropolitan Transportation Authority ("MTA") owns the LIRR, and both MTA and the LIRR are public authorities and public benefit corporations formed under the laws of the State of New York. LIRR is a class II common carrier.

For the last seven years, there has been only one rail user on the Garden City Line, the Ringling Brothers Barnum & Bailey Circus (the "Circus"), which uses the line once a year to access the Garden City Yard, where it parks the circus train (consisting of freight and related cars for the circus performances and equipment) during the circus' annual performances for seven days at the Nassau Coliseum, located approximately 1.5 miles from the Garden City Yard. Other

than the Circus, to LIRR's knowledge, LIRR's freight operator¹ has not received any requests for service over this line for seven years. The LIRR and the Circus have a contract which permitted the Circus access to the line in March 2002, and there is no contractual arrangement for such use beyond that date.

I. Description of Line to Be Discontinued

LIRR proposes to discontinue service over the Garden City Line. There are currently no active rail users on this line segment, other than the Circus. LIRR does not have any present plans to remove the track or otherwise dispose of the easements and rights of way, but instead will still utilize the Garden City Line for use strictly for internal MTA or LIRR rail purposes. If necessary, the LIRR will make arrangements with the Circus to permit such annual use.

II. Requirements of 49 C.F.R. § 1117.1

A. Short, Plain Statement of the Grounds Upon Which the Board's Jurisdiction is Based

The Board has jurisdiction over the proposed discontinuance under 49 U.S.C. § 10903. The Board is statutorily required to exempt a person, transaction or a service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines that statutory and regulatory requirements are: (1) not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either: (A) the transaction is of limited scope, or (B)

¹ In 1996, the LIRR and Southern Empire State Railroad Company ("Southern Empire") (Southern Empire's name was changed to New York & Atlantic Railroad ("NY&AR")) entered into a "Transfer Agreement" under which Southern Empire currently conducts freight operations over designated lines of the Long Island Rail Road. The Board previously accepted the verified notice of exemption with regard to this transfer of LIRR's freight operations to the NY&R. See New York & Atlantic Railway Co., 62 Fed. Reg. 1488 (Jan. 10, 1997). The Garden City Line
(continued...)

regulation is not needed to protect shippers from the abuse of market power 49 U.S.C. § 10502.

As shown below, LIRR satisfies these requirements.

B. Short, Plain Statement of the Claim Showing that the Petitioner is Entitled to Relief

LIRR requests that the Board grant to it, pursuant to the Board's authority under 49 U.S.C. § 10502, an exemption from the requirements of 49 U.S.C. §§ 10903 for the following reasons:

1. Requiring a Full Proceeding is Not Necessary to Carry out the Rail Transportation Policy of 49 U.S.C. § 10101

Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of discontinuing this line, an exemption will expedite regulatory decisions, reduce regulatory barriers to exit, foster sound economic conditions and encourage efficient management. (49 U.S.C. § 10101 (2), (5) (7) and (9)). Other aspects of the rail transportation policy are not adversely affected.

2. The Transaction is of a Limited Scope.

The transaction is also limited in scope because the proposed discontinuance involves only 2.2 total miles of track and the only shipper on the Garden City Line, the Circus, has only one movement per year.

3. Regulation is Not Necessary to Protect Shippers from the Abuse of Market Power

(...continued)

and Garden City Yard were not included in the transfer of operations to Southern Empire.

Regulation of this discontinuance by the Board is completely unnecessary to protect any shipper from the abuse of market power. Under the proposed discontinuance herein, the one current shipper will lose the right to rail service as a result of the proposed discontinuance. The LIRR however intends to provide service once a year to the Circus. (A copy of this Petition has been served on the Circus.)

C. A Demand for the Relief the Petitioner Believes is Appropriate.

LIRR seeks exemption pursuant to 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 10903 to discontinue the 2.2 mile long Garden City Line.

III. Level of Labor Protection to Be Imposed

There will be no impact at all on labor resulting from this discontinuance and no employees will be dismissed or displaced. If the Board, however, determines that labor protection should be imposed on this transaction, the appropriate level of labor protection applicable is that established in *Oregon Short Line Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

IV. Environmental and Historic Report

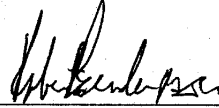
The proposed discontinuance will not result in any diversion of freight from rail to truck. The LIRR has no plans to salvage track or otherwise dispose of easements and rights of way. Consequently, the discontinuance will not result in any significant environmental impact and preparation of an Environmental Assessment is not necessary and the proposed discontinuance is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6 and historical reporting requirements under 49 C.F.R. § 1105.8.

CONCLUSION

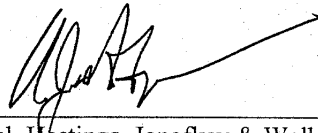
WHEREFORE, LIRR respectfully requests that the Board exempt from the prior approval requirements of 49 U.S.C. §§ 10903 the Garden City Line, in Nassau County, New York.

Dated: May 21, 2002

By: _____



Metropolitan Transportation Authority
Roberta Bender
Deputy General Counsel
347 Madison Avenue
Ninth Floor
New York, New York 10017-3739
Telephone: (212) 878-1044



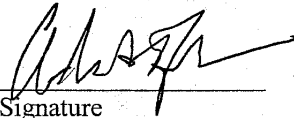
Paul, Hastings, Janofksy & Walker LLP
William D. DeGrandis
Judith Richards Hope
A. Jeff Ifrah
Tenth Floor
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400
Telephone: (202) 508-9500

Counsel for Metropolitan Transportation
Authority and the Long Island Rail Road
Company

AFFIRMATION

I A. Jeff Ifrah, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this request for discontinuance.

Executed on this 21st day of May, 2002.


Signature

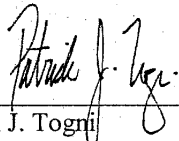
CERTIFICATE OF SERVICE

**THE LONG ISLAND RAILROAD COMPANY REQUEST FOR DISCONTINUANCE IN
GARDEN CITY, LONG ISLAND, NEW YORK**

VERIFIED PETITION FOR EXEMPTION

Feld Entertainment
1313 Seventeenth Street, East
Palmetto, Florida 34221
Attn: J. William Misiura

In accordance with 49 C.F.R. § 1104.12, I certify that I have this day served copies of the attached document upon all parties of record in this proceeding, by express mail, charges prepaid.



Patrick J. Togni
Government Affairs Assistant
Paul, Hastings, Janofsky & Walker LLP

5-21-02

Date

PaulHastings

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May 21, 2002

33333.33333

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001

**Re: Request for Fee Waiver Pursuant to 49 C.F.R. 1002.2(e)(1) in Surface
Transportation Board Docket No. AB-837: The Long Island Rail Road Company
Request for Discontinuance In Garden City, Long Island, New York**

Dear Secretary Williams:

Pursuant to 49 C.F.R. 1002.2(e)(1) and the *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services—Policy Statement*¹ (the “Policy Statement”), we respectfully request a fee waiver on behalf of the Long Island Rail Road Company (the “LIRR”) and the Metropolitan Transportation Authority (“MTA”) with respect to their request for partial discontinuance in Garden City, Long Island, New York (Surface Transportation Board Docket No. AB-837). In accordance with Surface Transportation Board policy², this request is being submitted simultaneously with the fee and the related filing.

This request for fee waiver respects the original intent of the Surface Transportation Board’s (the “Board”) rule providing for a waiver of filing fees for state and local government entities. MTA owns the LIRR, and both MTA and LIRR are public authorities and public benefit corporations formed under the laws of the State of New York.³ LIRR serves a tremendous public purpose in

¹ STB Ex Parte No. 542 (Sub-No. 6), Service Date – December 6, 2000.

² See Policy Statement at 5.

³ MTA was chartered by New York State in 1965. MTA is governed by a 17-person Board. Members are nominated by the Governor, with some recommended by New York City's mayor and the county executives of Nassau, Suffolk, Westchester, Dutchess, Orange, Rockland, and Putnam counties. The Board also has six rotating non-voting seats held by representatives of

(continued...)

Paul Hastings

Mr. Vernon A. Williams, Secretary
May 21, 2002
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supporting and sustaining the vitality, health and welfare of the New York area. LIRR moves over 85 million of the total 2.3 billion passengers that MTA subways, buses, and trains transport each year as part of North America's largest transportation network.

The facts of this particular request for discontinuance clearly support MTA/LIRR's request for fee waiver. The line of railroad over which LIRR seeks to partially discontinue service constitutes only three-tenths of one percent of LIRR's total track mileage.⁴ Moreover, this segment of track has only one movement per year by the Ringling Brothers Barnum & Bailey Circus (the "Circus")—and the LIRR will make arrangements with the Circus to permit such annual use. There are no other active users on this segment of rail.

In the event that you determine that MTA/LIRR does not qualify for the fee waiver, we respectfully request a fee waiver or reduction in fees pursuant to 49 C.F.R. 1002.2(e)(2), which provides that in extraordinary situations the Board will waive or reduce fees.⁵ As outlined above, this request for discontinuance is filed on behalf of the general public by a public benefit corporation whose comprehensive transportation network moves in excess of 2.3 billion passengers annually.

This request for discontinuance is extraordinary in that it solely relates to a sliver of track that constitutes three-tenths of one percent of LIRR's total mileage. MTA/LIRR's request for discontinuance cannot be contemplated within the scope of what is usual, regular or customary where a public entity is before the Board in a proprietary role. In this instance, the MTA/LIRR is acting solely on behalf of the public interest to partially discontinue service over the Garden City Line.

MTA/LIRR respectfully requests that the Board accept its request for fee waiver. Please contact the undersigned with any questions or concerns.

(...continued)

organized labor and the Permanent Citizens Advisory Committee, which serves as a voice for users of MTA transit and commuter facilities. All Board members are confirmed by the New York State Senate.

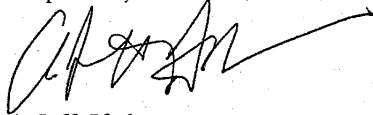
⁴ 2.2 miles of the 701 total miles of LIRR track (0.3%).

⁵ See Policy Statement at 4.

Paul Hastings

Mr. Vernon A. Williams, Secretary
May 21, 2002
Page 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Jeff Ifrah', with a long horizontal flourish extending to the right.

A. Jeff Ifrah
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

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