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October 21, 2002



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

Re: Docket No. AB 596, *New York City Economic Development Corporation*
– *Adverse Abandonment – New York Cross Harbor Railroad, Inc.*

Dear Sir:

The purpose of this letter is two-fold: 1) to follow up on the March 20, 2002 letter to Mr. David Konschnik ("Abeyance Request") in the above referenced proceeding; and 2) to ask the Board to move forward with its consideration of the merits of this proceeding.

New York City Economic Development Corporation (acting on behalf of the City of New York, New York) ("NYCEDC") and New York Cross Harbor Railroad, Inc. ("NYCH") (collectively "the Parties") submitted the Abeyance Request to the Board on March 20, 2002. We asked the Board to hold this proceeding in abeyance to give the parties and other railroads an opportunity to engage in discussions about potential solutions to the issues raised here. NYCEDC was attempting to facilitate the negotiation of an agreement among NYCH, CP Rail or the New York & Atlantic Railroad Company ("NY&A") regarding NYCH's use of the newly refurbished 65th Street Rail Yard in Brooklyn, New York. Once NYCH has worked out an agreement with NY&A for handling the traffic that NYCH brings to that facility, then NYCEDC would be willing to make an arrangement with NYCH for use of the float bridges at the 65th Street facility.

NYCH's continuing access to alternative facilities on the Brooklyn waterfront is not, of course, a necessary precondition to this Board's approval of the relief NYCEDC seeks in this proceeding. As NYCEDC stated in its Reply to the Protest of NYCH and the Joint Protest of Local Shippers, filed on February 4, 2002 in this proceeding, "[n]one of the shippers who have participated here have explained why using any of the other carriers that currently serve the region on the east side of the harbor, which include CP,

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NY&A and CSX Transportation, Inc., would not provide an adequate alternative to NYCH service." *Id.* at 12.

Indeed, NYCH's conduct in recent months underscores the rationale that NYCH has presented to this Board for securing revocation of NYCH's operating rights at the facilities that are the subject of this proceeding. Despite repeated requests for payment, NYCH has not paid NYCEDC the franchise fee of \$2200 per month it is obligated to pay for use of these facilities since June. The City of New York cannot be required to continue hosting a railroad that regularly shirks its responsibilities – both fiscal and environmental. Once this Board removes the Certificate of Public Convenience & Necessity with respect to the facilities that are the subject of this proceeding, NYCEDC can allow the proceedings it has begun in the New York State courts to evict NYCH from the premises to continue.

NYCEDC has waited patiently for seven (7) months since the Abeyance Request for NYCH to reach an agreement or to provide some evidence that it has made progress towards an agreement with either CP or NY&A. No such agreement exists as of this date. Instead, NYCH continues the pattern of behavior that brought NYCEDC to commence this proceeding in the first instance. Accordingly, NYCEDC respectfully requests that the Board no longer hold this proceeding in abeyance and proceed with issuing a ruling in the matter. The matter has been fully briefed and is ready for resolution.

I am enclosing an additional copy of this letter, which I would ask you to date stamp and return to our messenger. Thank you for your attention to this matter.

Sincerely,



Charles A. Spitulnik

cc: All parties