

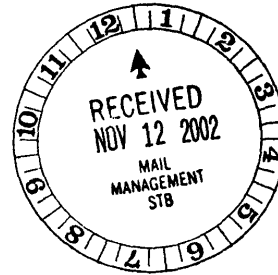
ORIGINAL

THE LAW OFFICES OF
JOHN D. HEFFNER
555 TWELFTH STREET, N.W.
SUITE 950N
WASHINGTON, D.C. 20004
(202) 737-4335
FAX (202) 371-2240
j.heffner@verizon.net

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206604

November 12, 2002

BY HAND

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RE: Docket No. AB-596, New York City Economic Development Corporation - Adverse Abandonment - New York Cross Harbor Railroad, Inc.

Dear Secretary Williams:

I am writing on behalf of the New York Cross Harbor Railroad ("NYCH") in connection with the letter filed on October 21, 2002, in the above-captioned proceeding by counsel for the New York City Economic Development Corporation ("NYCEDC"). NYCEDC improperly suggests that NYCH has been dilatory in its efforts to reach an agreement with NYCEDC, CP Rail, and the New York & Atlantic Railroad Company ("NY&A") for NYCH's use of the 65th Street Yard facility. NYCEDC asks the Board to promptly issue a ruling authorizing this adverse abandonment.

The Board should recognize NYCEDC's request for what it is: an effort to involve the Board in the ongoing negotiations over the use of this property. NYCH asks the Board to refrain from taking any action for 60 days in order to give the parties sufficient opportunity to resolve their problems without regulatory interference. Failing that, NYCH requests that the Board assign this matter for mediation by a neutral party.

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November 12, 2002
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NYCH wants the Board to know that it has not been the one delaying any discussions or negotiations. Immediately after NYCEDC agreed to file a letter with the Board holding these proceedings in abeyance, it sought a meeting with NYCEDC, CP Rail (which holds the rights to operate NYCEDC's 65th Street Yard and float facilities), and NY&A (which operates the facility for CP Rail). The City agreed to meet but only if the Federal Railroad Administration ("FRA") would convene a meeting under sec. 403 of the Railroad Revitalization and Regulatory Reform Act (because of NYCEDC's perception that such a meeting would raise anti-competitive issues for which antitrust immunity would be necessary). NYCEDC asked NYCH to contact the FRA to institute a meeting and, as the attached letter shows, NYCH promptly undertook to do that. Ultimately, FRA advised that this matter did not require any participation by the FRA. Then, after numerous attempts to schedule a meeting at a mutually acceptable time, date, and place, a meeting took place at NYCEDC's offices on May 30, 2002. NYCEDC, NYCH, and NY&A officials and counsel attended the meeting. CP Rail could not attend.

At that meeting, NYCH's then President (and current board member) Ron Bridges informed the meeting participants that NYCH had decided that it would not oppose NYCEDC's application and would terminate local service in Brooklyn provided that it could continue to interchange traffic with NY&A in Brooklyn and could use 65th Street Yard for that purpose. NYCH reminded NYCEDC of its statement in these proceedings that it would make 65th Street Yard available to NYCH. See, discussion in the second paragraph of the August 22, 2002, letter from NYCEDC counsel Charles Spitulnik to the undersigned. NYCH repeatedly asked for NYCEDC to provide an agreement. NYCEDC responded that NYCH should contact CP Rail and/or NY&A for an agreement. NYCH then contacted both CP Rail (officials Steve Lawrence and Dave Marsh) and NY&A (General Manager Fred Krebs) for an agreement. They replied that the 65th Street Yard operating agreement between NYCEDC and CP Rail gave NYCH the right to serve 65th Street Yard for the purpose of interchange and that NYCH need only finalize the arrangements with NYCEDC. NYCH's counsel understands that at a meeting held on around September 16, 2002, NY&A's Bruce Lieberman even advised

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November 12, 2002
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NYCEDC's Alice Cheng that all three railroads, NYCH, NY&A, and CP Rail, have an agreement on the operation of 65th Street yard including the float operations and all that is lacking is NYCEDC's willingness to allow NYCH to use the float bridges. Ms. Cheng had no response.

At that point CP Rail agreed to prepare an agreement to define the actual interchange of railcars and specifying the liability regarding the transfer of freight between the NYCH and NY&A. CP Rail undertook to prepare this document and assigned the job of drafting it to its outside counsel, Leonard, Street and Dienard. However, CP Rail's counsel, Barry McGrath, advised the undersigned counsel that a finished agreement would take a couple of weeks to prepare in view of the need for counsel to obtain information from the operating department and have the appropriate personnel review the final draft. As soon as CP Rail presents NYCH with a signature ready agreement and it signs an interchange agreement with NY&A, NYCH must then reach financial terms with NYCEDC as well for the use of its property. It is for this reason that NYCH needs the additional time.

Finally, I must take issue with NYCEDC for its continuing diatribe that NYCH is financially irresponsible for its alleged failure to pay the monthly \$2,200 franchise fee. NYCH has diligently paid this fee and is current with all money due. NYCH would be happy to furnish copies of the cancelled checks if so requested.

NYCH hopes to resolve its differences with NYCEDC very shortly and has been attempting to do so for several months. Requested meetings and inquiries as to the status and urging expediency in resolving this matter have been ignored. On October 23, 2002 NYCH encountered mechanical problems which prohibited it from floating railcars for several days. NYCH having reached an interim agreement with NY&A and CP, asked the NYEDC for an emergency means to use the float bridges at 65th street to facilitate rail service between New Jersey and New York and between the NYCH and NY&A. Now, over two weeks later, NYCEDC still has not come up with permission to use the new float bridges on a temporary basis.

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We therefore ask the Board continue to hold this proceeding in abeyance for another 60 days in order to allow negotiations to proceed. Failing that, NYCH requests that the Board assign this matter for mediation by a neutral party.

Sincerely yours,



John D. Heffner

Enclosures

cc: David Konschnik, Esq.
All parties
Barry McGrath, Esq.
Mr. Ronald Bridges
Mr. Wayne Eastman

THE LAW OFFICES OF
JOHN D. HEFFNER
555 TWELFTH STREET, N.W.
SUITE 950N
WASHINGTON, D.C. 20004
(202) 737-4335
FAX (202) 371-2240
j.heffner@verizon.net

March 25, 2002

Hon. Allan Rutter
Federal Railroad Administration
ROA-1
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Mr. Rutter:

At the suggestion of Joseph Pomponio, Esq., I am writing on behalf of the New York Cross Harbor Railroad ("NYCH") to request that your office convene a meeting under the provisions of section 401 of the Railroad Revitalization and Regulatory Reform Act.

By way of background, NYCH is a class III shortline railroad headquartered in Brooklyn, NY, which floats freight cars across New York Harbor between rail served customers along the Brooklyn waterfront and its freight yard in Greenville (Jersey City), NJ. At Greenville, NYCH connects with Conrail's shared assets operation and, through it, with CSX Transportation and Norfolk Southern Railroad. NYCH provides local freight service for its customers and provides the only direct link between freight customers located on Long Island and rail shippers and receivers located south and due west of New York.

In December 2001, the City of New York's Economic Development Corporation ("NYCEDC") filed an application at the federal Surface Transportation Board for authority to abandon trackage which the City owns and which NYCH operates along the Brooklyn waterfront. NYCEDC had filed this application as part of its litigation strategy to evict NYCH from certain rail facilities due to the alleged activities of former NYCH management. Subsequent to these activities, new management which had taken over NYCH's operations, had sought unsuccessfully to meet and negotiate with NYCEDC officials.

After NYCEDC initiated abandonment proceedings and the

Hon. Allan Rutter
March 25, 2002
Page two

parties submitted their evidence and argument at the STB,¹ counsel for the City and NYCH began informal discussions leading to a possible resolution of pending disputes. In that regard, NYCEDC has asked NYCH to transfer its cross Hudson barge operations from the present 51st Street facility to a new facility owned by NYCEDC at 65th Street. Such a shift would require the concurrence of CP Rail (which operates the 65th Street facility and which is willing) and the New York & Atlantic Railway (which owns a short section of track to be traversed and which has been uncooperative to date). In response to NYCH's request for a meeting and a tour of relevant rail facilities, NYCEDC has first asked NYCH to convene a Section 401 meeting.

Accordingly, NYCH respectfully requests the FRA to use its good offices to schedule a meeting, preferably in Brooklyn at NYCH's offices. Attendees would include NYCEDC, CP Rail, NY&A, the New York State Department of Transportation, NYCH, and such counsel as the parties may decide to bring. The attendees would inspect the trackage and facilities to be traversed by NYCH in moving freight between 65th Street Yard and its existing customers and would discuss how access would be provided over lines of NY&A and any problems relating to that access.

NYCH and NYCEDC have tentatively set a meeting for Thursday, April 4, 2002, in Brooklyn. I look forward to hearing from you by phone or mail at your earliest convenience.

Sincerely yours,



John D. Heffner

cc: Joseph Pomponio, Esq. (by fax 493-6068)
Charles A. Spitulnik, Esq.
Mr. John Guinan
Darryl Caplan, Esq.
Mr. Ronald W. Bridges

¹ On March 25, 2002, the STB issued a decision holding the abandonment proceeding in abeyance for 60 days to facilitate negotiations.

THE LAW OFFICES OF
JOHN D. HEFFNER
555 TWELFTH STREET, N.W.
SUITE 950N
WASHINGTON, D.C. 20004
(202) 737-4335
FAX (202) 371-2240
j.heffner@verizon.net

BY FAX AND MAIL
(202) 408-7763

July 18, 2002

Charles A. Spitulnik, Esq.
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001-1401

**RE: New York Cross Harbor Railroad Adverse Abandonment
Application filed by the New York City Economic
Development Corporation**

Dear Chuck:

I am writing on behalf of the New York Cross Harbor Railroad ("NYCH") to review the substance of the meeting convened by the New York City Economic Development Corporation ("NYCEDC") on May 30, 2002 regarding the future of NYCH's rail service in Brooklyn.

As we advised you, NYCH will terminate the local rail service it presently provides in Brooklyn because it cannot profitably serve that market under current conditions. NYCH will continue to interchange traffic with the New York & Atlantic Railway ("NY&A") at the 65th Street Yard provided that it can reach a satisfactory agreement with NYCEDC on charges for use of the 65th Street float facility and a satisfactory agreement with CP Rail on switching charges for the 65th Street Yard.

Regarding NYCH's local service, a grant of NYCEDC's abandonment application would eliminate NYCH's ability to serve the 43rd Street facility. Not having the use of that facility to prepare cars and hold them for our customers along with the additional switching charges which NY&A would likely impose for interchange of traffic makes it

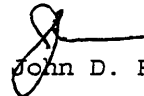
Charles A. Spitulnik, Esq.
July 18, 2002
Page two

even more unprofitable for NYCH to continue its local service in Brooklyn.

Once again, NYCH wants to reiterate its willingness to work with NYCEDC and the NY&A on a smooth transition for the local services which NYCH has been providing in Brooklyn.

Please contact either Ron Bridges or myself if you have any questions.

Sincerely yours,


John D. Heffner

Cc: Mark Sidman, Esq.
Mr. Ronald Bridges
Mr. Gordon Kuhn

LAW OFFICE
McLEOD, WATKINSON & MILLER

MICHAEL R. McLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
CHARLES A. SPITULNIK
RICHARD PASCO
ALEX MENENDEZ
ELIZABETH A. HAWS**
AMY B. JONES***

ONE MASSACHUSETTS AVENUE, N.W.
SUITE 800
WASHINGTON, D.C. 20001-1401
(202) 842-2345
TELECOPY (202) 408-7763

KATHRYN A. KLEIMAN*
OF COUNSEL
(*Admitted in Virginia only)
ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

(**Admitted in Ohio only)
(***Admitted in New York only)

August 22, 2002

BY FAX (202/371-2240) AND U.S. MAIL

John D. Heffner, Esquire
555 12th Street, N.W.
Suite 950N
Washington, D.C. 20004

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

Dear John:

This is to reply to your letter dated July 18, 2002. In your letter, you state that NYCH is willing to terminate the local service it currently provides in Brooklyn if: (1) it is able to reach an agreement with EDC for use of the new float facility at 65th Street; and (2) it is able to reach an agreement with CP Rail on switching charges for the 65th Street Yard. You have also provided me with a draft of a letter that you propose to send to the STB offering to withdraw NYCH's opposition to NYCEDC's application but with those same two conditions attached.

This is to confirm NYCEDC's view that there is no linkage between issues raised in the Application in this proceeding and NYCH's understandable wish to have access to the 65th Street Yard. It is true that in its Reply to the Protest of NYCH and the Joint Protest of Local Shippers, filed on February 4, 2002, NYCEDC stated that it would attempt to arrange for the facilities at 65th Street to be available to NYCH. However, NYCH's ability to use the 65th Street facilities should not be seen as a precondition to the STB's approving the application NYCEDC has filed.

The onus of reaching the agreements with CP and NY&A lies with your client and not with NYCEDC. Apparently, as of the date of your letter, NYCH had not been able to make an agreement with either CP or NY&A either about use of the 65th Street Yard or about switching charges to move traffic from there. Your letter offers no explanation as to why NYCH believes such agreements could be reached at any time in the future when it has been unable to reach them in the more than four months since the

John D. Heffner, Esquire
August 22, 2002
Page 2

STB began holding the adverse abandonment proceeding in abeyance. Once NYCH has demonstrated to NYCEDC that it will have facilities or operations available at 65th Street, NYCEDC will be willing to engage in discussions about the terms for use of the float bridges.

In the interim, NYCEDC stands by the position it has taken in its application at the STB.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles A. Spituinik", written in a cursive style.

Charles A. Spituinik

Subject: Your letter

Date: Thu, 18 Jul 2002 14:50:36 -0400

From: "Chuck Spitulnik" <cspitulnik@mwmlaw.com>

To: <j.heffner@verizon.net>

CC: "Alex Menendez" <amenendez@mwmlaw.com>

Hi John. Thanks for your letter today. Seth is out of pocket until next week, so I won't be able to get you a response until then. Chuck

Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
Phone: (202) 842-2345 ext. 206
Fax: (202) 408-7763
Cell: (301) 651-3629

RE: STB letter

Subject: RE: STB letter

Date: Tue, 30 Jul 2002 10:35:18 -0400

From: "Chuck Spitulnik" <cspitulnik@mwmlaw.com>

To: "John D. Heffner" <j.heffner@verizon.net>

John - Thanks for the heads up. I had planned to provide you with a reply to your earlier letter by tomorrow. We have been delayed because of busy (dare I say chaotic) schedules on the part of both me and the folks at EDC. I hope to be able to talk with you and provide a response by tomorrow. Chuck

-----Original Message-----

From: John D. Heffner [<mailto:j.heffner@verizon.net>]

Sent: Tuesday, July 30, 2002 10:09 AM

To: Chuck Spitulnik; r_w_bridges@hotmail.com

Subject: STB letter

Chuck, my client has directed me to file the following letter with the STB. I wanted to give you a "heads up." Of course, your client will want to notify the shippers and NY&A so that there is no lapse in rail service. I'll be going on a 13 day vacation, Wednesday Aug. 7, 2002. Call if you have any questions. John

RE: your letter

Subject: RE: your letter

Date: Fri, 23 Aug 2002 15:39:11 -0400

From: "Chuck Spitulnik" <cspitulnik@mwmlaw.com>

To: "John D. Heffner" <j.heffner@verizon.net>, <r_w_bridges@hotmail.com>

John -

NYCEDC will negotiate the terms for access to the float bridges, but the terms and c
I'm in Monday and Tuesday but away Wednesday through Friday, so I suspect you are ri
Chuck

-----Original Message-----

From: John D. Heffner [mailto:j.heffner@verizon.net]

Sent: Friday, August 23, 2002 3:21 PM

To: Chuck Spitulnik; r_w_bridges@hotmail.com

Subject: your letter

Chuck, thanks for your response to my letter. My client tells me that he has talked with both CP Rail and NY&A. CP is letting NY&A run the 65th Street facility for it and NY&A is willing to give NYCH access. Both parties say that it is NYCEDC which must set the terms for that access. Let's get together to discuss the terms for that access. I'll be out of town Monday and Tuesday and next Friday. So it will be easier to get together after Labor Day.

Subject: Access to 65th Street Yard

Date: Fri, 06 Sep 2002 16:38:55 -0400

From: "John D. Heffner" <j.heffner@verizon.net>

To: cspitulnik@mwm.com, r_w_bridges@hotmail.com

Chuck, I discussed your recent letter with my client and here is the response. Neither CP (Dave Marsh or Steve Lawrence) nor NY&A (Fred Krebs) has any objection to making these facilities available to NYCH. They said it's just a matter of working out the terms with NYCEDC. So, it's up to your client. Can we get together on terms for the use of this facility? Please call me next week. John

Friday's e-mail

Subject: Friday's e-mail

Date: Mon, 09 Sep 2002 10:08:45 -0400

From: "John D. Heffner" <j.heffner@verizon.net>

To: cspitulnik@mwmlaw.com

Chuck, I discussed your recent letter with my client and here is the response. Neither CP (Dave Marsh or Steve Lawrence) nor NY&A (Fred Krebs) has any objection to making these facilities available to NYCH. They said it's just a matter of working out the terms with NYCEDC. So, it's up to your client. Can we get together on terms for the use of this facility? Please call me next week. John

RE: 65th Street facility

Subject: RE: 65th Street facility

Date: Mon, 9 Sep 2002 10:07:57 -0400

From: "Chuck Spitulnik" <cspitulnik@mwmlaw.com>

To: "John D. Heffner" <j.heffner@verizon.net>

Hi John. I did not receive any email from you on Friday. Can you please resend it,

-----Original Message-----

From: John D. Heffner [<mailto:j.heffner@verizon.net>]

Sent: Monday, September 09, 2002 9:52 AM

To: Chuck Spitulnik

Subject: 65th Street facility

Chuck, good morning! I just wanted to clarify a statement in Friday's e-mail. NYCH just wants to use 65th Street for the purposes of interchange. It does not plan to relocate its other Brooklyn activities to 65th Street. So we need to work out the terms for NYCH's use of that facility for interchange purposes only. I anticipate seeing Ron Bridges on Wednesday so please get back to me before then. John

Subject: RE: 65th Street Access

Date: Thu, 26 Sep 2002 17:47:40 -0400

From: "Chuck Spitulnik" <cspitulnik@mwmlaw.com>

To: "John D. Heffner" <j.heffner@verizon.net>

Many thanks. I look forward to seeing the agreement. I will review this with my cl

-----Original Message-----

From: John D. Heffner [mailto:j.heffner@verizon.net]

Sent: Thursday, September 26, 2002 5:16 PM

To: Chuck Spitulnik; r_w_bridges@hotmail.com

Subject: 65th Street Access

Chuck, I discussed our conversation with my client. I understand that a meeting took place this past Monday with someone named Alice from EDC. CP Rail, NY&A, and NYCH all attended the meeting. All three railroads agreed that NYCH presently has the right to access the 65th Street facility under an Operating Agreement between Apple Industrial Development Corp., D&H Railway, and Canadian Pacific Railway. That agreement requires CP as the operator to designate and maintain a track for rail access for users of the Transfer Bridges [NYCH is the only present operator of the transfer bridges] to facilitate equal commercial access for cross-harbor railcar float operators and requires CP as the operator to structure its yard operations to facilitate equal commercial access for all rail operators, to interchange equipment and traffic with all connecting carriers, and so forth. CP interprets this agreement as giving NYCH access and NY&A agreed and all parties told that to Alice. I am faxing a copy for your information.

Please advise me as to the next step. We're ready to proceed. John

Subject: Contract excerpts

Date: Mon, 30 Sep 2002 16:33:22 -0400

From: "Chuck Spitulnik" <cspitulnik@mwmlaw.com>

To: "John Heffner (E-mail)" <j.heffner@verizon.net>

Hi John.

Many thanks for sending me the page out of the draft agreement between CP and the Ci

Also, to follow up on our previous conversation about a conference call, I am availa

Thanks and I look forward to discussing this matter with you further.

Chuck

Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
Phone: (202) 842-2345 ext. 206
Fax: (202) 408-7763
Cell: (301) 651-3629