

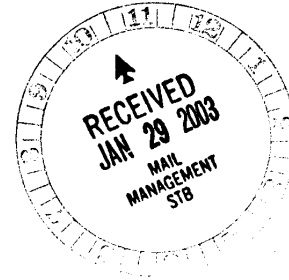
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Metropolitan Transportation Authority

State of New York
January 24, 2003



The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N.W.
Suite 700
Washington, D.C. 20423-0001

Re: Docket No. AB-167 (Sub. No. 1094)A - Abandonment -
Portion of Consolidated Rail Corporation's
West 30th Street Secondary Track, New York, New York

Dear Secretary Williams:

I am enclosing for filing in the above-captioned proceeding an original and ten copies of the "Motion to Accept This Statement on Behalf of the Metropolitan Transportation Authority of the State of New York (MTA) with Respect to the Pending Applications in This Proceeding."

Please date-stamp and return the extra copy that is enclosed. Also enclosed is a diskette containing the foregoing Motion in electronic format.

Very truly yours,

Anthony P. Semancik
Deputy General Counsel
(212) 878-7248

Encl.
cc: Service List

ENTERED
Office of Proceedings

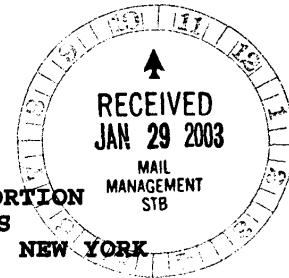
JAN 29 2003

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 167 (SUB-NO. 1094)A

CHELSEA PROPERTY OWNERS - ABANDONMENT - PORTION
OF THE CONSOLIDATED RAIL CORPORATION'S
WEST 30TH STREET SECONDARY TRACK IN NEW YORK, NEW YORK



ENTERED
Office of Proceedings
JAN 29 2003

Part of
Public Record

MOTION TO ACCEPT THIS STATEMENT ON BEHALF OF THE METROPOLITAN
TRANSPORTATION AUTHORITY OF THE STATE OF NEW YORK ("MTA") WITH
RESPECT TO THE PENDING APPLICATIONS IN THIS PROCEEDING.

1. The Metropolitan Transportation Authority of the State of New York ("MTA"), a New York State public authority that runs public mass transit in the New York City metropolitan region, hereby requests the Surface Transportation Board to accept this statement of its position with respect to the pending applications regarding Conrail's West 30th Street Secondary Track (the "Highline") in the borough of Manhattan in New York City. The pending applications include: (a) the Motion by Chelsea Property Owners ("CPO") that a Certain Settlement Agreement Satisfies the Surety Condition in the ICC's September 16, 1992 Order in this Proceeding ("CPO's motion"), (b) the Petition by the Friends of the Highline, Inc. ("Friends") to Reopen the 1992 Abandonment Decision (the "Friends' Petition to Reopen"), and (c) the request by the City of New York (the "City") for a Certificate of Interim Trail Use for the Highline (the "City's Request for Interim Trail Use"). MTA also requests permission to concur, in part, with the Reply of Consolidated Rail Corporation ("Conrail") filed January 13, 2003.

2. Prior to the present round of activity before the STB, MTA has been an active participant in this abandonment proceeding since the late 1980's. During this long and contentious abandonment proceeding, MTA never has wavered in advocating the abandonment, demolition and removal of that part of the Highline structure traversing MTA's Caemmerer West Side Yard (the "West Side Yard"). The West Side Yard is a large rail storage on Manhattan's West Side bounded by West 33rd Street to the north, West 30th Street to the south, Tenth Avenue to the East, and Twelfth Avenue to the West. It is operated by MTA's subsidiary, the Long Island Rail Road Company ("LIRR"), and is indispensable to LIRR's commuter rail yard operations in and out of New York's Penn Station. As explained in greater detail in our prior submissions to the ICC and the STB, the Highline restricts MTA's ability to use and develop the West Side Yard and poses a nuisance and a safety hazard to our employees, contractors and the general public. As demonstrated in the Highline inspection reports submitted last year by CPO and the City, the physical condition of the line has deteriorated further in the seven years that have elapsed since the ICC declared that public convenience and necessity favor abandonment. MTA's property continues to be burdened by a deteriorating structure that serves no public interests, poses an ongoing safety hazard and inhibits MTA from fully using its own property. Lest there be any doubt, MTA wants the STB and all parties to know that we remain steadfast in our desire to have the Highline structure over the West Side Yard demolished and removed.

3. The reason why MTA has not taken an active role in the current applications before the STB is that it has needed time to assess the new developments and disputes among other parties in the proceeding, including those arising from the purported interest by the Friends of the Highline ("Friends") and the City in alternative uses for the Highline. Furthermore, because other parties now are making assumptions in their papers about MTA's property, MTA feels more compelled to clarify its position to the Board. As a New York State public authority and the owner of the largest tract of property burdened by the Highline, MTA respectfully asks the Board to consider MTA's position with respect to the applications now pending in this proceeding.

CPO's Motion to confirm that the proposed Settlement Agreement satisfies the surety condition in the ICC's September 16, 1992 Order.

4. MTA acknowledges that it has not executed the proposed Settlement Agreement and has not obtained all necessary agency approvals to enter into the agreement. Nonetheless, having the STB confirm that the Settlement Agreement satisfies the surety condition in the ICC's September 16, 1992 Order would clarify that MTA and all parties have an acceptable option for concluding this long-standing dispute. There is no disagreement that the Settlement Agreement more than satisfies the surety condition in the ICC's 1992 Order, which merely stated that CPO, to satisfy the surety condition, should post "an appropriate surety bond or similar security to ensure payment of any demolition costs exceeding \$7 million." See 8 I.C.C. 773 at p. 792.

The Friends' Petition to Reopen.

5. MTA believes that no purpose would be served by reopening what must be one of the longest and most contentious rail abandonment proceedings ever. There are no current proposals to restore freight rail service over a deteriorating structure that has not supported such service for more than two decades. Nor is there any public consensus to do so. A full evaluation of rail banking proposals can be accomplished without reopening the entire abandonment proceeding. Although the ICC's 1992 Order has not yet produced a final resolution of the Highline abandonment, it would be even more difficult to resolve the Highline problem if the whole issue of abandonment were reopened for de novo review. As it stands, the 1992 Order serves as a starting point for consensus building among the affected parties. MTA respectfully requests that the STB not reopen it for further contentious debate.

6. In its letter dated January 10, 2003, the Friends request that its motion to reopen the abandonment proceeding be held in abeyance. For the reasons expressed above and in Conrail's and CSX's subsequent letters filed on January 16, 2003 in opposition to that request, MTA opposes that request. Simply stated, further delays in resolving the abandonment proceeding would serve no purpose and are not in the public's interest.

MTA's position regarding interim trail use over the West Side Yard.

7. As Conrail's January 13, 2003 Reply correctly states, MTA consistently has maintained, and continues to maintain, that those portions of the Highline traversing MTA's West Side Yard (i.e., the

Highline north of West 30th Street) should be demolished. Consistent with MTA's wishes, neither the Friends nor the City, as far as we are aware, presently is supporting a rails-to-trails option that would leave intact the present elevated Highline structure over the West Side Yard. MTA believes that using the existing elevated Highline structure over the West Side Yard for interim trail use is unacceptable and would result in serious safety and public security concerns for our employees and the general public.

8. However, both the Friends of the Highline and the City cite preliminary studies undertaken by Parsons Brinkerhoff Quade & Douglas, Inc., that would permit demolition of the Highline structure over the West Side Yard to accommodate development proposals and, in place of the existing structure, construct alternate rail connections allowing the remaining portion of the Highline south of West 30th Street to be reconnected to the national rail system. In its December 17, 2002 request for interim trail use, the City states that:

"In the event that demolition of any portion of the Highline to accommodate MTA rail yard development is required, the City will, prior to undertaking any demolition, secure any rights of easement or other property interests as may be required in order to maintain the Highline's connection with the interstate rail network and pendent Board jurisdiction."

See City's December 17, 2002 Reply to CPO's Motion, p. 13, ¶17.

9. For the record, and as Conrail correctly assumes in its January 13, 2003 Reply (see Verified Statement of David Alan Richards, ¶ 12), MTA presently has no agreement with the City or any other party for such an alternative freight rail easement over the West Side Yard. Nor can MTA presently guarantee that it ever would agree to convey such an easement in the yard, which now is used exclusively for commuter rail purposes. Any proposal for an easement for future rail connections over the West Side Yard, in relation to restoring freight rail service over the Highline south of West 30th Street, would require careful evaluation to determine whether freight service over it could coexist with commuter rail operations and MTA's use and development of the yard. The three options for alternative freight rail connections in the West Side Yard that are described in the Parsons Brinkerhoff report (see City's submission, Exhibit L) simply are too sketchy and short on details for MTA to evaluate whether they are feasible from safety, security, construction, and operational perspectives.

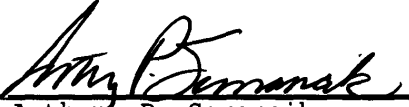
10. As Conrail recognizes in its January 13, 2003 filing, MTA (as well as the New York Convention Center Development Corporation which owns property immediately north of the West Side Yard and is similarly interested in removing the Highline from its property), are necessary parties to any rail banking agreement that implicates property north of West 30th Street. Our strong desire always has been, and continues to be, that the Highline north of West 30th Street will be demolished and removed. Additionally, MTA will not consider any rail banking proposal unless we receive acceptably

strong assurances, and unless we are certain, that the West Side
Yard will not be adversely impacted in any way.

Respectfully submitted,

METROPOLITAN TRANSPORTATION
AUTHORITY

By:



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Dated: New York, New York
January 24, 2003

CERTIFICATE OF SERVICE

The undersigned counsel for the Metropolitan Transportation Authority of the State of New York ("MTA") hereby certifies that on this 24th day of January 2003, a copy of MTA's foregoing motion was served on each party of record by overnight courier service (Airborne Express).

A handwritten signature in cursive script, reading "Anthony P. Semancik", is written over a horizontal line.

Anthony P. Semancik
Deputy General Counsel and Attorney for
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(212) 878-7248