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BY FAX AND MAIL

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 a letter reply filed by the New York City Economic Development Corporation ("NYCEDC") in the above-captioned proceeding. NYCH submits this letter to correct a statement made by NYCEDC's counsel and requests that the Board waive its usual prohibition against filing a reply to a reply¹ in order to accept this letter.

At page 4 of Mr. Spitulnik's letter, he suggests that the Board has no jurisdiction over the 65th Street float bridges because the City "is not a rail carrier providing transportation subject to the jurisdiction of the Board under this part" and because "no party has yet secured the right to use them."

I am enclosing for the Board's reference a copy of the Interstate Commerce Commission's July 15, 1983, decision authorizing NYCH to conduct a rail and marine service in the Borough of Brooklyn, NY and between Brooklyn, NY and Greenville Yard in Jersey City, NJ. The properties subject to that decision include "tracks, locomotives, a tug, floats, floatbridges

¹ See, 49 CFR 1104.13(c).

[emphasis supplied] and shop, work and office equipment. NYCH will also lease 4 carfloats to NYCH. NYCH has arranged to lease (1)... (2) New York City's Brooklyn Army Terminal, Bush Terminal, and 65th Street (when completed) [emphasis supplied]." NYCEDC's counsel is obviously aware of that decision inasmuch as he cited it in his Memorandum supporting the abandonment application at page 4.

As NYCEDC's counsel is also aware the term "railroad" is defined in the ICC Termination Act to include a "bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad." 49 U.S.C. 10102(6)(A). Furthermore, the Board has held on occasions almost too numerous to cite that when a railroad obtains authority to operate over track and other railroad facilities owned by another party, that party has a residual common carrier obligation as to that property. See, FD No. 31536, Jackson County Port Authority - Construction Exemption - Pascagoula, MS (served Aug. 21, 1990). Thus the subject float bridges became a railroad subject to the ICC's [and now the STB's] jurisdiction in 1983, if not before, and the NYCEDC is a rail carrier subject to the Board's jurisdiction.

The subject float bridges replaced deteriorated facilities built and operated long ago by the New York Connecting Railway, an affiliate of the New Haven and Pennsylvania Railroads. They were subsequently conveyed to Conrail under the Final System Plan of the U.S. Railway Association² and were, to the best of NYCH's recollection, eventually acquired by the State of New York through an offer of financial assistance proceeding in the 1980's when Conrail sought to abandon them. While the State paid to rebuild these facilities, they have never been abandoned.

Accordingly, the subject floatbridges are subject to the Board's jurisdiction for the purpose of entertaining a request to set terms and conditions for their use.

Please date stamp and return one copy of this letter for my records.

Sincerely yours,



John D. Heffner

Enclosures

cc: All parties (by fax)

²

See, Final System Plan at 245-6, copy attached.

245

NEW YORK

68

This portion of the Harlem Line, formerly part of the New York Central RR, extends from *Millerton* (Milepost 94.8) to *Ghent, N.Y.* (Milepost 126.8), a distance of *31.6 miles*, in Dutchess and Columbia Counties, N.Y. A northerly continuation of this line extends from Ghent to Chatham, where it connects with the Boston-Albany Line, PC. A southerly continuation extends from Millerton to Mott Haven Junction (see Line Nos. 66c, 66b, 66a and 66).

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:

Copake Falls.....	16
Hillsdale	31
Philmont	28

Total carloads generated by the line.....	75
Average carloads per week.....	1.4
Average carloads per mile.....	2.4
Average carloads per train.....	3.0
1973 operating information:	
Number of round trips per year.....	25
Estimated time per round trip (hours).....	12.0
Locomotive horsepower.....	1,750
Train crew size.....	3

Public Comments on Preliminary System Plan

According to the Columbia County Pomona Grange, this segment serves a high-impact agricultural area with 550 commercial farms. They are operated on 125,000 acres with the annual gross income of \$30 million.

Consolidated Edison Corp. reported that this segment is necessary for shipment of oversized electric equipment. It noted that reduced maintenance on this line has already made it inaccessible to the company's shipments.

The Harlem Valley Transportation Association introduced numerous letters from area private schools and environmental organizations which favored resumption of passenger service from Pittsfield, Mass. to New York City over this line.

Donald Walsh reported that the following companies use rail service at Millerton: Suburban Propane, Wayne Feeds, Bloch's Furniture, Inc., and Samuel Deull Lumber Co.

Information for Line-Transfer Decision

Revenue received by PC.....	\$28,599
Average revenue per carload.....	\$381
Variable (avoidable) cost of continued service:	
Cost incurred on the branch line.....	213,182
Cost of upgrading branch line to FRA Class I: (1/10 of total upgrading cost).....	\$2,182
Cost incurred beyond the branch line.....	21,496
Total variable (avoidable) cost.....	266,810
Net contribution (loss): total.....	(238,271)
Average per carload.....	(3,177)

This line would require upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.). Based on available information, this upgrading would include the replacement of a total of 7,426 crossties (an average of 235 crossties per mile).

RSPO testimony pointed out the necessity to keep this line as a clearance route. A connection will be built at Brewster which would be less expensive than rebuilding and operating this line.

Service to this line generated a loss of \$238,271 in 1973. Recovery of this loss would require approximately a thirty-fourfold increase in traffic or an 835-percent rate increase.

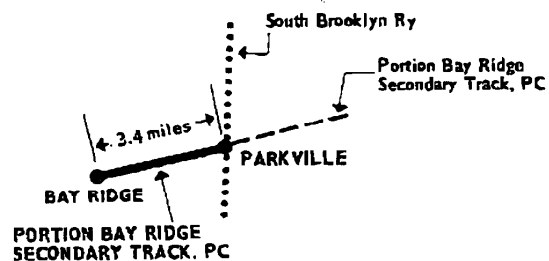
Disposition

This portion of the Harlem Line is *not* designated for transfer to Consolidated Rail Corp. and is available for subsidy pursuant to section 304 of the Act. Public officials have recommended that certain rail rights-of-way be used for other public purposes if rail service is discontinued. For line-specific recommendations, see section C of this appendix.

PORTION OF THE BAY RIDGE SECONDARY TRACK

USRA Line No. 68

Penn Central



This portion of the Bay Ridge Secondary Track, formerly part of the Pennsylvania RR, extends from *Bay Ridge* (Milepost 0.0) to *Parkville, N.Y.* (Milepost 3.4), a distance of *3.4 miles*, in Kings County, N.Y. A continuation of this line runs in a northeasterly direction from Parkville to Fremont. At Parkville this line connects with the South Brooklyn Ry.

**NEW YORK
70, 72, 76**

246

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:

Bay Ridge.....	45
Parkville ¹	142

Total carloads generated by the line.....	187
Average carloads per week.....	3.6
Average carloads per mile.....	56.0
Average carloads per train.....	3.6

1973 operating information:

Number of round trips per year.....	52
Estimated time per round trip (hours).....	0.8
Locomotive horsepower.....	1,500
Train crew size.....	4

¹ Includes only traffic on segment.**Public Comments on Preliminary System Plan**

According to the New York DOT, G&R Packing Co., the only shipper on this line, generates 187 carloads annually. USRA attributed only 76 carloads to G&R in 1973.

The following companies testified that continued service by the New York Dock Railway is essential to their operation: Prudential Lines, Inc.; Supreme Equipment and System Corp.; Guide Systems Supply; Hellenic Lines; Moore-McCormack; American Export Lines; Universal Maritime Services and Warshaw Manufacturing Co.

Several witnesses pointed out that discontinuing service on this line, coupled with the surcharge on float operations in New York Harbor, could ruin New York as a port city.

Northeast Marine Terminal reported that it handled 568 cars in 1974. When fully developed, the terminal will cover 280 acres and have facilities for 20 ships at once.

Information for Line-Transfer Decision

Revenue received by PC.....	\$134,538
Average revenue per carload.....	\$719

Variable (avoidable) cost of continued service:

Cost incurred on the branch line.....	29,613
Cost of upgrading branch line to FRA	
Class I (1/10 of total upgrading cost).....	1,841
Cost incurred beyond the branch line.....	83,076

Total variable (avoidable) cost.....	114,529
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Net contribution: total.....	20,007
Average per carload.....	107

This line would require upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.) Based on available information, this upgrading would include the replacement of a total of 460 crossties (an average of 125 crossties per mile).

Most of the traffic on the Bay Ridge Secondary Track is handled on the eastern portion (East of Parkville) of the track. The G&R Packing Company, located in Bay Ridge, is the only shipper using this segment. Its product is foodstuffs, usually government contracted.

The above reanalysis indicates that the line is viable based on 1973 traffic. However, it also has been shown that the port development activities will result in immediately increasing revenues.

Disposition

This portion of the Bay Ridge Secondary Track shall be transferred to the Consolidated Rail Corp.

CLAVERACK SECONDARY TRACK**USRA Line No. 70****Penn Central**

The Claverack Secondary Track, extending from *Hudson* (Milepost 0.0) to *Claverack, N.Y.* (Milepost 4.2), a distance of *4.2 miles*, in Columbia County, N.Y., a line which was recommended for inclusion on page 606 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

AQUEDUCT BRANCH**USRA Line No. 72****Penn Central**

The Aqueduct Branch, extending from *Schenectady* (Milepost 0.0) to *Aqueduct, N.Y.* (Milepost 4.1), a distance of *4.1 miles*, in Schenectady County, N.Y., a line which was recommended for inclusion on page 606 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

ALBANY SECONDARY TRACK**USRA Line No. 76****Penn Central**

The Albany Secondary Track, extending from *Selkirk* (Milepost 3.7) to *Port of Albany, N.Y.* (Milepost 10.8), a distance of *7.1 miles*, in Albany County, N.Y., a line which was recommended for inclusion on page 607 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

01

SERVICE DATE

INTERSTATE COMMERCE COMMISSION

JUL 15 1983

DECISION

Finance Docket No. 30183

NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP. -- EXEMPTION FOR
OPERATION AND ISSUANCE OF SECURITIES

No. AB-219 (Sub-No. 2)

NEW YORK DOCK RAILWAY -- ABANDONMENT -- KINGS COUNTY, NY

Decided: July 3, 1983

By application filed June 3, 1983, the New York Cross Harbor Railroad Terminal Corp. (NYCH) seeks a certificate of public convenience and necessity under 49 U.S.C. 10901 to operate a terminal railroad in the New York, NY area. NYCH also seeks (1) an exemption to issue securities; (2) a waiver of filing fees; and (3) a waiver of any public hearing. In addition, NYCH filed a petition on May 3, 1983 seeking waiver of environment and energy data required under 49 C.F.R. 1150.7. In the alternative NYCH seeks an exemption under 49 U.S.C. 10505. The Brotherhood of Locomotive Engineers (BLE) protests the application. The New York Department of Transportation (NYDOT) has filed comments on the proposal. Numerous local businesses and governmental bodies have filed letters in support of the proposal.

NYCH seeks authority to conduct a rail and marine service in the Borough of Brooklyn, NY and between Brooklyn, NY and Greenville Yard in Jersey City, NJ. Operations are presently conducted by the New York Dock Railway (NYD). NYD has sought, however, authority to abandon all operations in Docket No. AB-219 (Sub-No. 2), New York Dock Railway -- Abandonment -- Kings County, NY.

NYD has agreed to sell assets necessary to conduct the described operations for \$1.5 million. The assets include tracks, locomotives, a tug, floats, floatbridges, and shop, work

Finance Docket No. 30183

and office equipment. NYD will also lease 4 cars/floats to NYCH. NYCH has arranged to lease (1) Consolidated Rail Corporation's Greenville yard in Jersey City, NJ (2) New York City's Brooklyn Army Terminal, Bush Terminal and 55th Street Yard (when completed); and (3) the Atlantic Terminal owned by the Port Authority of New York and New Jersey.

To finance the purchase of NYD assets, NYCH has reached an agreement with Northbrook Leasing (Northbrook). Under this agreement, Northbrook will advance \$1.5 million to purchase the NYD assets. The property will be leased to NYCH for 5 years. At the end of this period NYCH will receive title to the assets from Northbrook for a nominal fee. NYCH has also arranged a loan of \$300,000 from the National Bank of North America for working capital. Both agreements will require NYCH to issue promissory notes.

The Commission may begin an exemption proceeding on its own motion. 49 U.S.C. 10505(b). While NYCH has applied for authority to operate under 49 U.S.C. 10901, it has alternatively requested an exemption. It is appropriate to treat its application as a petition for exemption from 49 U.S.C. 10901 under 49 U.S.C. 10505.1/ We also note that under the terms of the loan agreement, Northbrook will acquire title to various NYD assets including "track" located at various terminal facilities. Commission authorization is required if a non-carrier acquires rail line unless the acquisition involves spur, industrial, team, switching, or side tracks and the tracks are located or intended to be located entirely in one State (49 U.S.C. 10907). Because it is unclear whether Northbrook's track acquisition is within

1/ We will dismiss NYCH's petitions to waive: (1) environment and energy data under 49 C.F.R. 1150.7 because this regulation is not applicable in exemption proceedings; (2) oral hearing because oral hearings are generally not required in exemption proceedings and no need has been shown for one here; and (3) filing fees because exemption petitions do not require any fee. NYCH's fee will be refunded.

Finance Docket No. 30183

our jurisdiction, on our own motion we will initiate a proceeding to exempt Northbrook from 49 U.S.C. Subtitle IV, and will consider this exemption in this decision.

Pursuant to 49 U.S.C. 10505, the Commission shall exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

The rail transportation policy will be fostered by the proposed exemptions. Exemption will minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers for entry into and exit from the industry.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Exemption will merely allow NYCH to substitute its services for those currently provided by NYD. Exemption will also further the interest of existing shippers by assuring continued service over lines which otherwise would be subject to abandonment. We note that numerous shippers support this proposal.^{2/} Since we have determined that regulation is not necessary to protect shippers from an abuse of market power, it is not necessary to consider whether the transactions are of limited scope. However, we note that the operation is limited to small sections of Brooklyn and Jersey City.^{3/}

2/ Monarch Wine Co., Inc.; Consolidated Edison Company of New York, Inc.; Gusseo Manufacturing, Inc.; Cumberland Parking Corporation; New York Rail Car Corporation; Gem Parking Corporation; Tri-Borough Transportation Corporation; Express Haulage Corporation; Davidson Pipe Supply Co., Inc.; 73 businesses represented by Southwest Brooklyn Industrial Development Corp.; the Brooklyn Chamber of Commerce; and many businesses in Brooklyn by the Borough of Brooklyn.

3/ NYDOT has filed comments addressing NYCH's ability to perform the described services and assume certain NYD contractual obligations. NYDOT has not demonstrated that exemption should be denied. In light of NYD's announced intention to abandon this line and the absence of any other substitute rail carriers, we continue to conclude that exemption should be granted.

Finance Docket No. 30183

* The exemption here will enable NYCH to substitute its services for NYD. Accordingly, NYD's abandonment application is no longer appropriate and will be dismissed.

BLE requests that the Commission impose the conditions contained in New York Dock Ry. - Control - Brooklyn Eastern Dist. 360 I.C.C. 60 (1979) and require NYCH to grant first preference to NYD and Brooklyn Eastern District Terminal employees. Under 49 U.S.C. 10505(g) we cannot relieve a carrier of its obligation to protect employees. The imposition of employee protective conditions in proceedings under 49 U.S.C. 10901 is discretionary. No need has been shown for their imposition.^{4/}

Our initial review of the proposal indicates that the exemptions will not affect either the quality of the human environment or energy consumption.

It is ordered:

1. New York Cross Harbor Railroad Terminal Corp. is exempted from the requirements of 49 U.S.C. 10901 to conduct the described terminal railroad operations in the New York, NY area.
2. NYCH's issuance of securities under the described agreements are exempted from the requirements of 49 U.S.C. 11301.
3. Northbrook Leasing's acquisition of the described line is exempted from the requirements of 49 U.S.C. Subtitle IV.
4. Docket No. AB-219 (Sub-No. 2) New York Dock Railway -- Abandonment -- Kings County, NY, is dismissed.

^{4/} The remaining exemptions do not involve any action for which labor protection is required.

Finance Docket No. 30183

5. NYCH's petitions for waiver filed May 3, 1983 and June 3, 1983 are dismissed.

6. Notice shall be published in the Federal Register.

7. The parties shall notify the Commission within 30 days of consummation.

8. These exemptions shall be effective on July 18, 1983.

9. Petitions to reopen must be filed by August 8, 1983.

By the Commission, Division 1, Commissioners Andre Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary



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