

BEFORE THE
SURFACE TRANSPORTATION BOARD

208214

STB Docket AB-No. 596

ORIGINAL

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
- ADVERSE ABANDONMENT - NEW YORK CROSS HARBOR RAILROAD
IN BROOKLYN, NY

MOTION TO STRIKE
OF NEW YORK CROSS HARBOR RAILROAD



NEW YORK
Office of Proceedings

JUN 26 2003

File of
Public Record

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

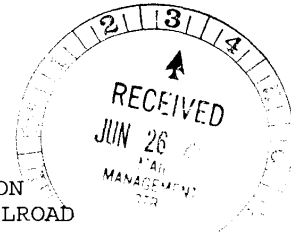
Counsel for New York
Cross Harbor Railroad

Dated: June 26, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket AB-No. 596

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
- ADVERSE ABANDONMENT - NEW YORK CROSS HARBOR RAILROAD
IN BROOKLYN, NY



MOTION TO STRIKE
OF NEW YORK CROSS HARBOR RAILROAD

I.

INTRODUCTION

On June 23, 2003, the New York City Economic Development Corporation, Acting on Behalf of the City of New York, New York ("NYCEDC") replied to the Petition for Reconsideration filed by the New York Cross Harbor Railroad ("NYCH") in the above-captioned proceeding. Pursuant to 49 CFR 1104.10 and 1104.13(a), NYCH moves to strike as new evidence matter submitted in its Reply to NYCH's Petition for Reconsideration.

ARGUMENT

NYCEDC improperly uses its opportunity to respond to NYCH's arguments by attempting to insert new matter at this late date in these proceedings. Specifically, at page 14 of its Reply, NYCEDC states:

"[u]ntil recently, one shipper, American Warehousing, Inc., ("AWI") accounted for the majority of the traffic moved by NYCH in Brooklyn. Now, however, the termination of AWI's lease at the Southern Brooklyn Marine Warehouses ("SBM Warehouses") will dramatically decrease the number of carloads that travel over the First Avenue rail line. Specifically, AWI's lease has ended and AWI is no longer occupying or using the SBM Warehouses and thus no longer sending its 976 carloads of traffic on the First Avenue rail line. Therefore,

the record demonstrates that the individual company thru-put volume on the NYCH rail line by companies decreased from 1117 cars annually to approximately 141 cars. Clearly, this supports the Board's finding that "there is relatively little traffic on this line."

The Board's Rules of Practice contemplate that Applicant's will submit their entire case in chief with their application, that Protestants such as NYCH will have a chance to respond by filing a protest, and Applicant will then have a chance to reply to matter contained in the protest. 49 CFR 1152.26. At that point the record is closed for the purpose of submitting new evidence. For NYCEDC to attempt to submit this information at this late date will encourage the parties to continue their attacks and counterattacks *ad nauseam*.

NYCH urges the Board to disregard NYCEDC's allegations. Should the Board decide to accept this matter, NYCH requests the opportunity to rebut NYCEDC's half truths and to be given the opportunity, if appropriate, to submit evidence of certain new traffic movements for which customers have contacted it. Regarding the former, NYCEDC does correctly state that AWI no longer uses the SBM Warehouses which were damaged in a fire. But that is not the end of the story. AWI continues to be a very important rail customer for NYCH, moving over 700 car loads of cocoa beans to its facility at the adjacent Red Hook Warehouse in Brooklyn. The AWI traffic does not move to the Red Hook facility utilizing the 51st float bridge. Rather, NYCH loads the cars onto its barge and moves them directly to the Red Hook facility where the product is then unloaded. However, the point to remember is that NYCH could not economically justify handling AWI's traffic unless it continued its car float operations, whether to 51st Street or 65th

Street. In other words, termination of NYCH's trans Hudson car float service means the loss of over 700 cars per year of AWI cocoa traffic. Conveniently, NYCEDC neglects to mention that fact.

Recently, two new customers contacted NYCH about using the railroad to route traffic between their facilities on Long Island (on the New York & Atlantic Railway) and origins or destinations elsewhere in the country using NYCH as a bridge carrier between Greenville and either 51st Street or 65th Street. Should the Board accept NYCEDC's new evidence in the record, NYCH requests leave to submit evidence of new traffic from either or both of these customers.

CONCLUSION

NYCH respectfully requests that the Board strike the aforementioned matter and that if the Board declines to do so accept matter which NYCH tenders here or to be filed shortly.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Counsel for New York
Cross Harbor Railroad

Dated: June 26, 2003

CERTIFICATE OF SERVICE

I, John D. Heffner, do hereby certify that I have this 26th day of June 2003, served a copy of the foregoing Motion to Strike by the New York Cross Harbor Railroad on all parties in this proceeding by fax transmission and first class mail.


John D. Heffner