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LAW OFFICE

MCLEOD, WATKINSON & MILLER

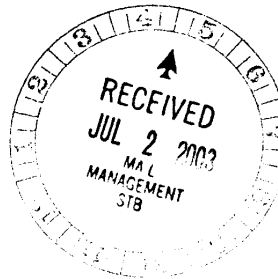
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GOVERNMENT RELATIONS

July 2, 2003



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

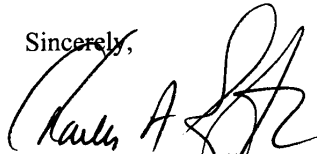
Re: Docket No. AB No. 596; *New York City Economic Development Corporation –
Adverse Abandonment – New York Cross Harbor Railroad In Brooklyn, New York*

Dear Sir:

I am enclosing an original and ten (10) copies of the Reply of New York City Economic Development Corporation, Acting on Behalf of The City of New York, New York to Motion of New York Cross Harbor Railroad to Strike and Cross Motion of New York City Economic Development Corporation to Strike in the above-referenced proceeding. An extra copy is enclosed for date stamp and return to our messenger. In addition, we are enclosing a 3.5" diskette with this document.

Thank you.

Sincerely,


Charles A. Spitulnik

Enclosures

cc: Beryl Gordon, Esquire
All Parties of Record

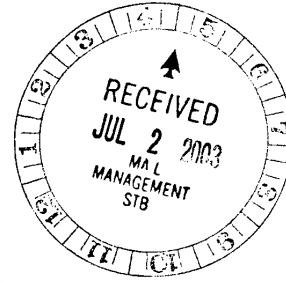
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JUL 2 2003

Part of
Public Record

**Before the
Surface Transportation Board**

Docket AB-No. 596



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

**REPLY OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,
ACTING ON BEHALF OF THE CITY OF NEW YORK, NEW YORK TO
MOTION OF NEW YORK CROSS HARBOR RAILROAD TO STRIKE
AND
CROSS MOTION OF NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION TO STRIKE**

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Counsel for New York City Economic
Development Corporation, Acting on Behalf
of the City of New York, New York

Dated: July 2, 2003

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CROSS MOTION OF NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION TO STRIKE**

New York City Economic Development Corporation, acting on behalf of the City of New York, New York ("EDC") pursuant to 49 C.F.R. 1104.10 and 1104.13(a) and through counsel, hereby replies in opposition to the Motion of New York Cross Harbor Railroad ("NYCH") To Strike ("Motion to Strike") and files this cross motion to strike the new evidence submitted by NYCH in its Motion to Strike.

I. Introduction

On June 26, 2003, NYCH filed a Motion to Strike pursuant to 49 C.F.R. 1104.10 and 1104.13(a), alleging EDC's Reply to the Petition for Reconsideration filed on June 23, 2003 ("EDC Reply to Petition") included new evidence. NYCH alleges that the "new evidence" in the EDC Reply to Petition is:

Until recently, one shipper, American Warehousing, Inc. ("AWI") accounted for the vast 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 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."

See Motion to Strike at p. 2. Based on its wholly erroneous argument that this constitutes new evidence, NYCH attempts to introduce additional evidence about shippers that it failed to introduce during the pendency of this proceeding.

II. Argument

Simply put, NYCH is flat out wrong. Its Motion to Strike lacks any basis in law or fact. The evidence that NYCH seeks to strike was taken directly from the verified statement of Seth O. Kaye ("VS Kaye") that EDC had previously submitted as part of EDC's Reply to Protest of New York Cross Harbor Railroad and Joint Protest of Local Shippers ("EDC Reply to Protest") in this proceeding on February 4, 2002.¹ EDC described VS Kay in the EDC Reply to Petition as having been previously filed and made a part of the record. *See EDC Reply to Petition* at 14. EDC specifically identified the information included there as having been taken from Mr. Kaye's previously submitted testimony. Clearly, NYCH did not review that testimony before submitting its entirely frivolous Motion to Strike.

A review of the argument made by NYCH in its Motion to Strike reveals the true motive behind its submission. In order to seek an opportunity to introduce new evidence along with the Motion to Strike, NYCH had to attempt to create the illusion that EDC had somehow introduced new evidence to which it needed to reply. That new evidence relates to potential matters that NYCH could have introduced during the pendency of this proceeding. Specifically, NYCH, in its Motion to Strike, outlines and introduces information relating to the importance of AWI as a

¹ EDC had attached a copy of VS Kaye to the EDC Reply to Protest.

rail customer and the existence of two new alleged customers. NYCH then requests that it be provided the:

opportunity to rebut NYCEDC's half truths and to be given the opportunity...to submit evidence of certain new traffic movements for which customers have contacted it.

See Motion to Strike at p. 2.

What half truths? There are none here. Even if there were (which there are not), the information at issue was made part of the record in this case in February 2002, over one year ago. Accordingly, all the new evidence information that NYCH submitted, discussed and/or referenced in the Motion to Strike is inappropriate and should be stricken. As NYCH notes in its Motion to Strike:

... the Board's rules of practice contemplate that Applicants will submit their entire case in chief with their application, that Protestants...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.

Motion to Strike at p. 2 citing 49 C.F.R. 1152.26. EDC complied with the regulations because it filed the evidence that NYCH now seeks to strike in February of 2002 in the EDC Reply to Protest. On the other hand, NYCH has violated the applicable regulations by attempting to submit new evidence over one year and four months after the evidence was submitted to the Board, long after the record has closed and, indeed, after the Board has rendered a final decision.

III. Conclusion

In view of the foregoing, NYCH's Motion to Strike should be denied in its entirety and EDC's cross motion to strike the evidence submitted by NYCH in the Motion to Strike should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

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Counsel for New York City Economic
Development Corporation, Acting on Behalf
of the City of New York, New York

Dated: July 2, 2003

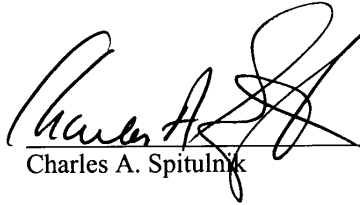
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing REPLY OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, ACTING ON BEHALF OF THE CITY OF NEW YORK, NEW YORK TO MOTION OF NEW YORK CROSS HARBOR RAILROAD TO STRIKE AND CROSS MOTION OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION TO STRIKE, to be served by hand delivery and first class mail, postage prepaid upon the following:

John D. Heffner
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036

Thomas F. McFarland, Jr.
Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194

Dated: July 2, 2003



Charles A. Spitulnik