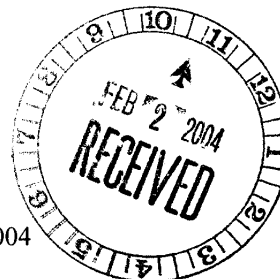


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January 26, 2004



Via Facsimile (202-565-9004) and US Mail

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

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Public Record

Re: Finance Docket No. 34429
Petition of the New York City Economic Development Corporation,
Acting on Behalf of the City of New York, New York for Declaratory Order

Dear Secretary Williams,

Please accept this submission as a petition under 49 CFR 1117.1 for relief from procedural requirements under 49 CFR 1104 and as reply and comment on the letter of the New York State Department of Environmental Conservation (NYSDEC) dated January 5, 2004 and entered by the Board on January 12, 2004, which supports an extension of time for written comments.

Relief under 49 CFR 1117.1 is requested because the procedural requirements under 49 CFR 1104 would tend to limit participation by the general public without the expertise or resources to participate in the submission process. The participation of the general public in the above referenced docket is essential because of the domination of the docket record by interrelated state and local governmental agencies and the consequential indirect effects of the proposed expansion of freight rail service throughout the northeastern North American continent. In particular, although the extant record provides indication that NYSDEC and the New Jersey Department of Environmental Protection (NJDEP) have an interest in addressing local direct impacts, the record lacks any indication of interest in more far reaching effects. In the interest of brevity, the indirect effects of massive increases in rail movements associated with expansion of rail facilities to accommodate the expansion of port facilities and the connection of a City of New York solid waste transfer facility to the Staten Island Railway will be discussed below.

Certainly, there is an overriding public interest in granting the extension of time for written comments to allow the NYSDEC and NJDEP sufficient time to review an environmental assessment in excess of 200 pages that was reportedly submitted to NYSDEC on December 16, 2003. A failure of the Board to approve an extension of time would only tend to encourage other applicants to make filings around holiday seasons in the hope that filings would receive cursory review or no review at all, because of the potential for short staffing situations in government agencies associated with holiday travel and vacation leave and the general distraction of the

public during these periods of time. In this instance, the Board should be urged to delay making any decision on the need for an Environmental Impact Statement (EIS) under 40 CFR 1502 until there has been comprehensive comment and reply on potential environmental impacts associated with the proposed expansion of freight rail facilities. Arguments by the New York City Economic Development Corporation (NYCEDC) requesting that the Board "expedite its handling" of these matters carry no weight in view of the Board's primacy in determining the need for an Environmental Impact Statement to assure conformance with the National Environmental Policy Act (NEPA) and the need to protect the public interest. Review of files at the New Jersey Department of Transportation (NJDOT) regarding the Staten Island Railway clearly reflects the fact that discussions involving proposals to reactivate this railway extend at least as far back as 1996. Within the last eight years, the NYCDEC was responsible for developing a project plan that provided for the contingencies necessary to assure protection of the environment without placing undue hardship on the Board. According to pages 15 and 16 of the NYCEDC filing of October 29, 2003 it was essential to obtain expedited handling by the Board in order to begin offering contracts by November 2003 in order to be ready "by the time that the DSNY waste transfer facility is fully operational." Clearly, the petitioner's deadline has passed, and the NYCEDC assertion that "The construction season in New York is short" would lead the reader to conclude that the petitioner has already lost too much of the 2004 construction season to meet its deadlines. The situation also, however, begs the question of why the New York City Department of Sanitation (DSNY) would build a waste transfer facility without having any way to remove waste from the facility, and why any presumptions at the New York City Department of Sanitation should exert undue pressure upon the Board.

But, the reactivation of the Staten Island Railway from Staten Island into New Jersey is also being driven by massive, existing and anticipated, increases in the arrival of marine cargo generated by expansion plans of the Port Authority of New York and New Jersey. The anticipated impact of the Comprehensive Port Improvement Plan is so great that the participating federal agencies have required the Port Authority of New York and New Jersey to begin work to complete an Environmental Impact Statement for the port expansion. Data regarding past, current and anticipated volumes of the movement of marine cargo by road and rail may be found at www.cpiponline.org and www.cpipeis.com, although summarized data has also been presented in *The Star-Ledger* (Newark, New Jersey) in an article entitled "Seeking a better bottom line," which was published on pages 16 and 17 of the November 12, 2003 edition. Essentially, despite the fact that the number of containers passing through New York Harbor steadily doubled between 1991 and 2002, the Port Authority of New York and New Jersey argued that it was losing business to Halifax, Nova Scotia and exerted political pressure to get the Army Corps of Engineers to dig the harbor beyond historic depths to 50 feet, a project that is currently ongoing. Accompanying the argument was the assertion that all the cargo had to come into New York Harbor to meet the consumer demands of the New York/New Jersey Metropolitan Area. Contrary to this assertion, however, page 6 of "Building a 21st Century Port," an undated publication of the Port Authority of New York and New Jersey clearly states that "the New York-New Jersey region seeks to capture a greater share of the nation's trade." Page 21 of that same publication also states that: "Reopened in 1996 after a decade of inactivity, the Howland Hook Terminal ...The Port Authority, in cooperation with the City of New York, is therefore proposing

a phased development of up to 177 new acres of container-handling capacity at Howland Hook, along with *new* rail facilities and expanded warehousing.” (emphasis added). Table 1 on page 23 of that same document reflects a proposed Port Authority timetable that would add a total of 687 acres of new and expanded port facilities between 2000-2008.

Further controverting the assertion regarding the necessity of expansion to meet local consumer needs, the Comprehensive Port Improvement Plan clearly indicates that it intends to rely on a freight rail system that stretches out to Canada; Buffalo, New York; Boston, Massachusetts and Washington, D.C., thereby placing the plan in competition with port facilities at Norfolk, Virginia; Boston, Massachusetts; Baltimore, Maryland; Halifax, Nova Scotia; and the numerous ports along the Great Lakes/St. Lawrence Seaway system. But, while New York Harbor is being excavated, the Army Corps of Engineers has just begun a five year feasibility study of an improvement plan for the Great Lakes/St. Lawrence Seaway system, even though the economic and environmental advantages of container ship over rail transport include the ability of a 1000-foot-long container ship to transport the equivalent of six trains of 100 cars each, while using one-third of the fuel that trains would consume, without creating any conflicts with road traffic and commuter rail.

The expansion of Port of New York and New Jersey operations is enormous in scope. In 1991, a total of 1.1 million containers or 1.8 million twenty-foot equivalent units (TEUs) passed through the port. By 2002, a total of 2.2 million containers or 3.75 million TEUs passed through. By 2010, the Port Authority of NY and NJ expects to receive 4.4 million containers, and 8.8 million containers by 2040. A significant amount of the increased movement of truck containers is related to the expansion of the Howland Hook Marine Terminal on Staten Island. Significantly, marine cargo received at Howland Hook would be carried by the Staten Island Railway across the Arthur Kill Lift Bridge, recently renovated by the NYCEDC, with the intention of connecting to the Chemical Coast Line, across new track connections that have been proposed by the Port Authority of New York and New Jersey under Finance Docket No. 34428. Specifically, the Connection to the Chemical Coast Line would afford ready access to CSX, Norfolk Southern and Conrail Shared Assets and allow freight movements through Oak Island Yard near Newark Liberty International Airport and thence onto the Lehigh Valley Railroad, which has the ability to move freight on a double track through Essex and Union counties in New Jersey, but along a single track through Middlesex County, New Jersey. In addition, the Lehigh Valley Railroad connects to the Rahway Valley Railway, which was the subject of an issuance for a Modified Certificate of Public Convenience and Necessity by the Board under FD No. 43054 on July 5, 2002 in accordance with 49 CFR 1150.21. From the Rahway Valley Railway, freight would be able to reach Summit, New Jersey and the Erie-Lackawanna system, which currently functions primarily as a commuter line, but which would provide access through Morristown, Dover and Andover, New Jersey to the abandoned Lackawanna Cutoff, which NJDOT has proposed for reactivation, and which would provide access to freight rail facilities at Scranton, Pennsylvania for movements to Buffalo, New York and beyond. In addition, although the October 22, 2003 filing of the Port Authority of New York and New Jersey under FD No. 34428 at page 4 states: “The revitalized SIRR will not extend west of the New Jersey Turnpike, but will connect to the Shared Assets Area operators....”, the Board’s issuance of a Modified Certificate of Convenience and Necessity to the Morristown & Erie Railway, Inc. (M &E), under

FD No. 43054 as noted above, authorized reactivation of the Staten Island Railway west of the New Jersey Turnpike in addition to reactivation of the Rahway Valley Railway. Running the length of the Staten Island Railway from Staten Island through to Cranford, New Jersey would therefore only require restorative maintenance or replacement of the railway trestle over the New Jersey Turnpike to return to a prior routing, ostensibly without Board approval. Despite the assertions of the Port Authority of New York and New Jersey under FD No. 34428, results of an interview with M&E President Gordon Fuller published by *The Union Leader* (Union, New Jersey) on August 14, 2003 in a front-page article entitled "State to determine improvements" clearly reflects a plan to run straight from Howland Hook Marine Terminal to the Erie-Lackawanna line at Summit, New Jersey.

Herein lies the crux of the problem. The impact of the Comprehensive Port Improvement Plan of the Port Authority of New York and New Jersey is so immense that it has created a Wild West atmosphere within the rail industry. Norfolk Southern and CSX suddenly had an interest in Conrail Shared Assets. M&E suddenly wanted to reactivate the shortlines in Union County, New Jersey, the Staten Island Railway west of the New Jersey Turnpike and the Rahway Valley Railway, which had been abandoned ten years earlier. Notably, the Rahway Valley Railway had been used to transport coal through to Summit, New Jersey before the widespread conversions to oil and gas for heating purposes. In addition, the overall impact is diluted by the sheer number of agencies sponsoring the various rail projects that will impact all of northeastern North America. Other lines that had pursued an interest in the Staten Island Railway reactivation included Canadian Pacific, CSX and Transrail. Under FD 34429, NYCEDC is sponsoring the addition of miles of new track that will serve expanded port facilities and route New York City Municipal Solid Waste onto the rail system. Otherwise, NJDOT variously controls most of affected rail infrastructure. NJDOT contracted with the Port Authority of New York and New Jersey allowing that agency to petition the Board under FD No. 34228 to facilitate connection of the Staten Island Railway to the Chemical Coast Line. NJDOT contracted with the County of Union, which permitted the M&E to file for a Modified Certificate of Public Convenience and Necessity under FD No. 34054 to reactivate the Rahway Valley Railway and Staten Island Railway west of the New Jersey Turnpike. NJDOT is using New Jersey Transit to press for reactivation of the Lackawanna Cutoff between Andover, New Jersey and Scranton, Pennsylvania, reportedly to restore passenger service. NJDOT is also proposing the laying of additional track on the Lehigh Valley Railroad between Edison and Bound Brook, New Jersey; on the Chemical Coast Line; and at Oak Island Yard in cooperation with Norfolk Southern and CSX, all to be done without federal funding and without federal Environmental Impact Statement under the presumption that the prior presence of track along the rail right-of-way would preclude the need for Board approval.

The matter is further exacerbated by NJDOT's failure to reveal the ultimate effect of the various rail projects elucidated above. The NJDOT response to the requirements of the state Transportation Trust Fund renewal law of 2000 is particularly illustrative. In *Tri-State Transportation Campaign, Inc., et al v. Donald T. DiFrancesco, et al*, No. A-0278-01T5 (N.J. Super. Ct. App. Div. June 11, 2003), the state Appellate Court ruled that the NJDOT violated the law with regard to the development of required information and noted: "We find that the NJDOT, citing the impossibility of planning, funding and completing the projects within a span of four years, has failed to plan at all. Instead, it has produced only a description of a single

year's projects, selected through unstated criteria, without the benefit of articulated strategic goals. The NJDOT's '[capital investment strategy]' thus clearly violates the Legislature's command that it engage in strategic planning, and that it articulate a plan that focuses to a significant degree upon the goal of repair of the State's aging infrastructure." Essentially, NJDOT has proceeded on a tactic that tends to both evade the public process and any meaningful evaluation of environmental impact.

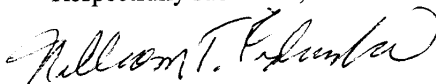
Accordingly, the NJDOT has created a scenario wherein the NYCEDC proposal to construct more than a mile of new track beyond the prior rail terminus in order to bring a waste transfer station on line and the NYCEDC plans to accommodate the geometric expansion of port traffic fail to consider the ability of existing infrastructure to handle dramatic increases in freight movement or consider the indirect environmental impacts of these actions at distance from Staten Island as required under 40 CFR 1502.16(b) under the definition at 40 CFR 1508.8. In particular, there is a crying need to recognize the fact that the affected rail lines in New Jersey were laid out more than a century ago when the economy was mostly agrarian and there was limited potential for conflict between freight rail, commuter rail and vehicular traffic. Because of the limited potential for traffic conflicts, the affected lines were designed with numerous crossings at grade. As state and federal highway policies encouraged automobile and truck travel and suburban development, railroads tended to fall into decline or disuse and abandonment. In particular, the Application of the Abandonment of the Rahway Valley Railway Company was approved under ICC Docket No. AB-211 by order of August 21, 1992. An Application of the Abandonment of the Staten Island Railway Corporation was approved under ICC Docket No. AB-263(Sub-No. 3) by order of November 29, 1991. Freight movement along the Staten Island Railway and Rahway Valley Railway through Union County, New Jersey will create an ever-increasing potential for conflicts with vehicular traffic at crossings at street level and with commuter rail along shared portions of line. With state aid, Union County is reactivating the previously-abandoned Staten Island Railway and the Rahway Valley Railway, which cross 24 roadways at street level, including U.S. Route 22, a major interstate highway, and St. Georges Avenue, another heavily traveled road, at the Roselle and Linden border. The lines share commuter rail with the Raritan Valley Line at Cranford, New Jersey (which already shares the section of track with the Lehigh Valley Railroad freight line) and the predominantly passenger Erie-Lackawanna at Summit, New Jersey. Also targeted in Port Authority plans, the Reading System from Port Reading to Bound Brook, New Jersey and the Lehigh Valley from Edison to Bound Brook account for an additional 19 crossings at street grade, including Route 35 in Woodbridge, Inman Avenue in Edison, and New Market Road in Piscataway. Obviously, the directly affected railroads will also impact Somerset, Mercer, Hunterdon, Sussex and Warren counties, but rail right-of-way anywhere in the New Jersey can ultimately be involved.

A full, properly scoped Environmental Impact Statement would be necessary to adequately evaluate the cumulative and indirect impacts of the massive expansion of port facilities and the extension of the Staten Island Railway to a Municipal Solid Waste Transfer Station on Staten Island. In particular, the EIS needs to consider the potential of increased freight movement for creating traffic gridlock of both motor vehicles and commuter rail, the lost productivity that will result as hundreds of thousands of vehicular and rail commuters wait for freight trains to clear the tracks, consequential losses of leisure time, the tons of additional

pollutants that freight trains and waiting vehicles and commuter trains will cause, the additional noise load along rail lines, odor pollution from loads of garbage, and the consequential degradation of quality of life. Although some garbage railcars might be regarded as being "sealed," even the most modern cars must vent out odors or burst from the expansion of fermentation gases. Critical to the EIS would be the realization that the Port Authority of New York and New Jersey is attempting to corner the market on marine cargo in northeastern North America and ship that cargo with the addition of New York City garbage through some of the most congested areas of New Jersey on a rail system that competes with both commuter rail and vehicular traffic. From that standpoint, an alternative analysis would have continent-wide significance. The Board's jurisdictional authority over the public health and safety in this matter is clear, as is the need for public outreach and the need to determine when grade crossings require grade separation. In many ways the situation is analogous to that encountered by the Board prior to the Board's issuance of a decision under FD No. 33407 on January 28, 2002 regarding the application of the Dakota, Minnesota & Eastern Railroad Corporation. Beyond the simple no-build alternative, the alternatives should include the advisability of diversion of cargo to other ports, the development of a new deepwater port along the Eastern Seaboard, and the need to expedite an improvement plan for the 34 ports along the Great Lakes/St. Lawrence Seaway system. Ultimately, floating marine cargo to a number of the 34 ports along the Great Lakes/St. Lawrence to supply the Northern Tier may have environmental and economic benefits that would make it undesirable to move freight on road and rail through the congested New York/New Jersey metropolitan area. Using Howland Hook Marine Terminal to ship containerized trash by sea might also be an alternative to be considered.

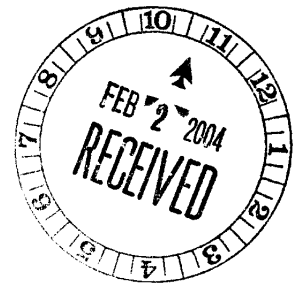
Certainly, the overall impact of the Comprehensive Port Improvement Plan and the proposed extension of the Staten Island Railway to accomplish routing of New York City Municipal Solid Waste through New Jersey would meet the requirements of 49 CFR 1105.5 for significant potential to affect the quality of the human environment as defined under 40 CFR 1508.27(a) & (b). Without resorting to a comprehensive listing, the matter certainly involves the need to balance adverse and beneficial impacts under 40 CFR 1508.27(b)1, aspects of public health and safety under 40 CFR 1508.27(b)2, potential controversial effects under 40 CFR 1508.27(b)4, and cumulative impact under 40 CFR 1508.27(b)7. In considering the need for an EIS, the Board may wish to consider the fact that the cumulative effect of Port of New York/New Jersey expansion has triggered the Comprehensive Port Improvement Plan EIS. In this matter, the jurisdiction of the Board has primacy over a rail system that is and will continue to be impacted throughout northeastern North America. I herein beg the Board to consider the importance of its actions to matters of national policy and the public interest relating to the movement of freight by sea, road and rail.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "William T. Fidurski", written in a cursive style.

William T. Fidurski

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January 27, 2004

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

**Re: Finance Docket No. 34429
Petition of the New York City Economic Development Corporation,
Acting on Behalf of the City of New York, New York for Declaratory Order**

Dear Secretary Williams,

At the direction of the Board, I have this day, January 27, 2003, mailed a copy of my January 26, 2004 letter addressed to the Board, regarding the above referenced docket, to:

Charles A. Spitulnik, Esquire
McLEOD, WATKINSON & MILLER
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001

Thank you for your kind attention to this matter.

Respectfully submitted,

William T. Fidurski