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The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
395 E St., SW
Washington, DC 20423



Re: Town of Babylon and Pinelawn Cemetery-Petition
for a Declaratory Order, FD No. 35057,
Respondents', New York & Atlantic Railway Co.
and Coastal Distribution, LLC, request that
Petitioner's Supplemental Response of September
25, 2007 be disregarded.

Honorable Sir:

This office represents Coastal Distribution, LLC. This is in response to the petitioner's letter of September 27, 2007.

The Petitioners improperly seek to argue that the recent Third Circuit decision in New York Susquehanna and Western Railway Corp. v. Lisa P. Jackson, No. 07-1675 (decided September 4, 2007) changes the law applicable to the respondents' request for a protective order against Petitioners' extensive and irrelevant discovery demands. It is submitted that the decision has no such effect; therefore, the petitioners' letter of September 25, 2007 is merely an improper supplemental reply.

The New York & Atlantic Railway holds Coastal Distribution out as its agent to market and facilitate access to its rail transportation services through the Farmingdale transloading facility, within the Town of Babylon. It is undisputed that the reason for designating Coastal as the agent to operate Farmingdale was that after two years of having a similar relationship with CSXTransflow, that entity had generated almost no traffic. Coastal was willing and able to market the facility and to provide the capital needed to build and operate facilities which are required to connect the NY&A's rail services to the customers who could use that service. As NY&A is contractually obligated to increase freight use of the Long Island Railroad it could not allow this facility to remaine lightly used. Fulfilling NY&A's obligation requires aggressive marketing of rail services and the provision of appropriate cargo handling facilities. CSXT was unwilling to provide either. It is well established that almost no potential customers on Long Island have access to sidings. Therefore, all increases in rail use on the Island have been and must continue to be through the development and use of transload terminals such as that at Farmingdale.

It is also undisputed that NY&A, a local carrier, does not collect any moneys from any of its CSX customers¹ including those served through the use of Coastal's transloading services. All freight is collected by CSX, as the line haul carrier. NY&A is paid its share of the freight by CSX. As Coastal consolidates customers' shipments into carloads, it collects both the freight charges and its service charges from the Farmingdale customers and remits the freight for each resulting carload to CSX. It reports the number of cars shipped or received to NY&A. Coastal handles inbound shipments of various commodities as well as outbound C&D shipments. This system of payments is all well established in the substantial record already developed in this case and is consistent with NY&A's policy of farming out such functions so that it need not maintain the staff to do this itself.

It is undisputed that as NY&A has designated Coastal as its agent and lists Farmingdale as its terminal, NY&A is liable to the world for any injury due to any negligence committed by Coastal in the discharge of that agency. This is identical to the liability of the Susquehanna with regard to the

¹ CSX connects with NY&A at Fresh Pond Jr. in Queens and is the line haul carrier for the vast majority of NY&A's traffic. NY&A also interchanges with Norfolk Southern via the New York and New Jersey Railroad and with the Canadian Pacific at Fresh Pond. All of the current traffic originating or terminating at Farmingdale is handled by CSX west of Fresh Pond.

negligence of one of its contract facility operators as noted by the Third Circuit.

It is undisputed that the terminal belongs to the NY&A and consists only of pre-existing tracks and associated land devoted to rail transloading service for over a century. It is undisputed that NY&A and Coastal attempted to work with local officials to assure that the loading facilities constructed to make the terminal useful to the Long Island freight market complied with local requirements. It is undisputed that town officials asserted that they had no authority to review the plans and refused to do so even to assure compliance with building and safety regulations. It is undisputed that the Long Island Railroad, a state owned common carrier, approved the plans for the facility. It is undisputed that the Coastal facility fully complies with all building codes and that State officials have found it complies with applicable State health and safety regulations.

Therefore, nothing in the Third Circuit decision alters the fact that the discovery demanded by the petitioners here is excessive and irrelevant to the issues before the Board in this proceeding. There is no question that the petitioner's seek merely to increase the respondent's costs and to delay resolution of this matter further. The decision of the Third Circuit does not change the applicable law.

Therefore, the petitioners supplemental response contained in their letter of September 25, 2007, should be disregarded.

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

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