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July 30, 2003

Honorable Roger Nober
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Docket No. AB 167 (Sub-No. 1094)A; *Chelsea Property Owners – Abandonment
– Portion of the Consolidated Rail Corporation's West 30th Street Secondary
Track in New York, NY*

Dear Chairman Nober:

On behalf of the City of New York, I would like to express our appreciation once again for the opportunity to address the Board at the hearing on July 24, 2003, about the issues that still require resolution in this proceeding. At that hearing you posed some questions to the second panel of speakers to which the City's representatives were unable to respond on the record. The purpose of this letter is to request leave to clarify the City's position with respect to two of those questions.

Specifically, you engaged in a colloquy with participants in the second panel about whether the Board should now review and/or approve the "form" of the draft Settlement Agreement that Chelsea Property Owners ("CPO") has presented as the document that satisfies the surety condition included in the ICC's 1992 Decision in this proceeding. CPO stated that this Board can and should now approve the "form" of that Agreement. The City disagrees, and submits that the indemnity and "surety" provisions are not ripe for even an advisory opinion, much less a declaratory order as CPO suggested. Rendering an opinion as to the satisfaction of the surety condition in the 1992 Decision by the terms of the draft agreement is premature because, for all the reasons set forth in the City's submissions to the Board, it is doubtful that this draft agreement is the final agreement and that its terms will even be implemented. It is unlikely that this draft agreement will remain as currently drafted, given the issues raised by the City and the railroads and developments resulting from negotiations between the City and CPO.

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Once all parties concur that an agreement is final and binding on all of them and is in a form acceptable to all of them, and that all are willing and legally able to participate in it, then an advisory opinion by this Board might be appropriate. Those circumstances are not present here. As a result, any time spent by the Board on parsing whether this draft agreement satisfies the requirements of the ICC's 1992 Decision would be an inappropriate waste of this Board's scarce resources.

The Board also asked the second panel of speakers whether the railroad parties and CPO would be able to accomplish an abandonment and demolition of the Highline without City participation. The City, of course, cannot speak for either of these parties, but wishes to place their answers in context. The implications of the abandonment for all of the parties are complex. Demolition cannot occur without permits and right now the City cannot issue those permits as a result of a Court order in the proceeding (described in the City's pleadings) commenced by the New York City Council. The current proposal involves a transfer of property interests and cash contributions by the railroad to a tax-exempt entity, with attendant tax benefits. Without the City's cooperation, it is not clear that those benefits can be realized. Without those benefits, it is not clear whether the railroads will want to undertake the demolition. Moreover, an arrangement that does not include the City also would remove the contribution the City was going to make to the demolition cost. Placed in context, the railroads' and CPO's willingness and ability to implement an abandonment and demolition are not at all clear.

The City appreciates this opportunity to clarify its view with respect to this issue. We will be pleased to respond to any further questions the Board may wish to pose.

Sincerely,



Charles A. Spitulnik
Counsel for the City of New York, NY

cc: Hon. Vernon Williams
All parties of record