

BEFORE THE SURFACE TRANSPORTATION BOARD

300934

Norfolk Southern Railway Co. – )

Abandonment Exemption – ) AB 290 (Sub-No. 408X)

in Hudson and Essex Counties, N.J. )

ENTERED  
Office of Proceedings  
July 28, 2020  
Part of  
Public Record

Reply and Comments on behalf of

City of Jersey City,

Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition,

and Rails to Trails Conservancy

This Reply and Comments are on behalf of City of Jersey City (“City”), Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (“EPC”), and Rails to Trails Conservancy (“RTC”), collectively “Commenters.” Commenters will refer to the rail line at issue in this proceeding (8.6 miles, extending from MP WD 2.9 in City of Jersey City to MP WD 11.5 in Montclair) as the “Boonton Branch” or “Line.”

Interest of commenters. The City is a unit of local government, municipal corporation, and the second largest city in New Jersey. The portion of the above-captioned abandonment within Hudson County is also within the boundaries of the City. EPC is a non-profit organization comprising local residents, neighborhood organizations and other entities dedicated to preservation of the Harsimus Branch

Embankment and related properties for public use, including but not limited to historic preservation, greenway, park, trail and rail. RTC is a nation-wide non-profit corporation with more than 160,000 members and supporters nationwide that facilitates the preservation of inactive rail corridors for continued and future public transportation uses, including for possible future rail reactivation ("railbanking") and for other compatible interim public uses, including use as trails. City, EPC and RTC all share an interest in the completion of the preferred route of the East Coast Greenway through Jersey City and beyond.

Additionally, City, EPC and RTC since January 2006 have participated in proceedings before this agency in protest of the unlawful sale of a line of railroad known as the Harsimus Branch (including its historic Embankment) by Consolidated Rail Corporation ("Conrail") to a developer for non-rail purposes without even seeking much less obtaining an STB abandonment license, without timely prior compliance (much less any meaningful compliance) with applicable federal environmental and historic preservation statutes, and perforce without timely compliance with City's right of first refusal guaranteed under state law. In fourteen years of proceedings since 2006, City, EPC, and RTC have consistently supported public acquisition of the Harsimus Branch for historic preservation, trail, park and other compatible public uses including uses involving rail. City, EPC and RTC have repeatedly pointed out that the Harsimus Branch is not only

significant in its own right but as part of an important opportunity to create a trail system in Jersey City and to extend the East Coast Greenway from Newark to New York. Unfortunately, Conrail and its parent corporations [Norfolk Southern Railway (“NSR”) and CSX] in league with the developer have litigated extensively before STB and in numerous state and federal judicial proceedings to evade STB regulation, and to thwart preservation of the Harsimus Branch, and the matter remains unresolved. See, e.g., Conrail – Ab Ex – in Hudson County, AB 169 (Sub-No. 1189X) (numerous decisions and filings). For purposes of the proceeding now at bar, it is important to note that the Harsimus Branch can be readily connected to the Bergen Arches/Erie Cut, which in turn lies close to the Jersey City endpoint of the Boonton Branch at issue in this case. City, EPC and RTC of course have a keen interest in public preservation of the Boonton Branch not only as a sister project of independent merit but also an extension of the outcome for which they are committed for the Harsimus Branch – a greenway for trail and other compatible public uses across Jersey City from the Hudson River to connections to Newark and beyond. The Harsimus Branch, Bergen Arches/Erie Cut, and Boonton Branch are all on the recommended off-road East Coast Greenway route through Hudson County.

Reply/Comments. 1. According to NSR, there has been no freight rail use of this line by customers since 1999. NSR Petition at p. 1. The line appears to

qualify for an exempt abandonment, subject of course to applicable Board remedies, inasmuch as it is eligible for the two-year out-of-service exemption. Commenters note that NSR represents that if the relief sought in the Petition is granted, then “pursuant to a trails agreement to be filed in this proceeding, NSR will convey the right of way to OSI [Open Space Institute Land Trust] with the Line’s rail, track materials, and bridges intact.” NSR Petition p. 3.<sup>1</sup> NSR represents that Hudson and Essex Counties “will eventually assume legal and financial responsibility for the trail to be developed over the line.” Id. p. 3 n.1. NSR further represents that “[f]ollowing abandonment, NSR will convey the right of way to OSI with the Line’s rail and related track material intact.” Id. p. 17. NSR indicates that bridges and similar structures are expected to remain intact. Id. Commenters strongly support and endorse NSR’s stated intention of cooperating with OSI in preserving the Boonton Branch for greenway, trail, and allied purposes,<sup>2</sup> and on the basis of NSR’s representations encourage STB to authorize abandonment and railbanking on the premises, and otherwise facilitate transfer of the railbanked line to OSI and/or ultimately to Essex and Hudson Counties.

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<sup>1</sup> Commenters do not believe that NSR and OSI must “file” an agreement with this Board but they should notify the Board if an agreement has been reached. 49 CFR 1152.29(h).

Commenters construe NSR’s petition to indicate that an agreement is in essence reached and awaiting authorization of abandonment/railbanking for final formalities.

<sup>2</sup> Commenters assume that OSI and/or its designees will file a “statement of willingness” invoking the Trails Act (16 U.S.C. 1247(d)) and seek any public use conditions they deem necessary.

2. In its petition for exemption, NSR seeks exemption from the “OFA” process. Petition at 16 et seq. According to the decision served in this proceeding on July 9, notices of intent to file an OFA were due by July 20, 2020. Examination of the STB website shows that no notices of intent to OFA were filed. Commenters conclude that NSR’s request for an exemption from OFA procedures is therefore moot. Any invocation of the OFA process at this point is out of time and presumably subject to dismissal. See Sierra Northern Railway – Ab. Ex. – in Yolo County, CA, AB 874 (Sub-No. 1X), served June 22, 2020, slip op at 6.

3. Commenters request a copy of any environmental assessment and reserve the right to comment upon that.

Conclusion. The inclusion of the Boonton Branch in a regional trail system is an important and significant opportunity for Jersey City residents, the citizens of New Jersey, and prospective users of the East Coast Greenway. Stitched together with the former rail corridor through the Bergen Arches/Erie Cut and the Harsimus Branch, it will offer dedicated non-motorized trail access all the way to the Hudson River waterfront. Commenters encourage all regulatory steps necessary to facilitate this result.

Service. By my signature below, I certify to service of this pleading upon NSR's representative (William A. Mullins) at his address of record on the date below set forth, and by courtesy email attachment.

Respectfully submitted,

s/ Charles H. Montange

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