

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL



DOCKET NO. AB-873X . 211936

NEW YORK AND EASTERN RAILWAY, LLC-DISCONTINUANCE EXEMPTION
IN POUGHKEEPSIE, DUTCHESS COUNTY, NY

DOCKET NO. AB-55 (SUB-NO. 652X) , 211937

CSX TRANSPORTATION, INC.-DISCONTINUANCE EXEMPTION
IN POUGHKEEPSIE, DUTCHESS COUNTY, NY

DOCKET NO. AB-565 (SUB-NO. 17X) 211938

NEW YORK CENTRAL LINES, LLC-ABANDONMENT EXEMPTION
IN POUGHKEEPSIE, DUTCHESS COUNTY, NY

PETITION FOR EXEMPTION
UNDER 49 U.S.C. 10502

ENTERED
Office of Proceedings

SEP -2 2004

Part of
Public Record

REPLY TO PROTEST OF
GREAT EASTERN COLOR LITHOGRAPHIC CORPORATION

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202)263-4180

Counsel for Petitioners

DATED: September 2, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-873X

NEW YORK AND EASTERN RAILWAY, LLC-DISCONTINUANCE EXEMPTION
IN POUGHKEEPSIE, DUTCHESS COUNTY, NY

DOCKET NO. AB-55 (SUB-NO. 652X)

CSX TRANSPORTATION, INC.-DISCONTINUANCE EXEMPTION
IN POUGHKEEPSIE, DUTCHESS COUNTY, NY

DOCKET NO. AB-565 (SUB-NO. 17X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT EXEMPTION
IN POUGHKEEPSIE, DUTCHESS COUNTY, NY

PETITION FOR EXEMPTION
UNDER 49 U.S.C. 10502

**REPLY TO PROTEST OF
GREAT EASTERN COLOR LITHOGRAPHIC CORPORATION**

On August 2, 2004, Great Eastern Color Lithographic Corporation ("Great Eastern") filed a two page letter protest in the above-captioned abandonment and discontinuance proceeding. At the request of Joint Petitioners New York Eastern Railway, LLC ("NY&E"), CSX Transportation, Inc. ("CSXT"), and New York Central Lines, LLC ("NYC"), the Board issued a decision on August 27, 2004, postponing until September 2, the deadline for Joint Petitioners' response.

NY&E attaches to this Reply the Verified Statement of its

President Eyal Shapira answering the allegations made by Great Eastern. NY&E understands that CSXT and NYC will be submitting their own reply today.

Essentially, Great Eastern contends that it has been unable to use the subject rail line and forced to use truck service because of the *de facto* abandonment of service by Petitioners. NY&E cannot address Great Eastern's allegations about CSXT's service. While NY&E admits that the subject trackage was in poor condition at the inception of its lease with CSXT, it did, as Mr. Shapira relates, meet with on-line customers in an effort to develop sufficient traffic to justify a resumption of service. Unfortunately, these contacts did not generate sufficient traffic volumes to warrant the substantial investment required to restore the line to service.

Respectfully submitted,


John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202)263-4180

Counsel for Petitioner
New York and Eastern Railway, LLC

DATED: September 2, 2004

**VERIFIED STATEMENT
OF EYAL SHAPIRA**

Eyal Shapira, being duly sworn, deposes and states as follows:

1. My name is Eyal Shapira. My business address is One Gateway Center, Suite 501B, Newton, MA 02458.
2. Since August 15, 1998, I have been in the business of owning, operating, and marketing short line railroads. I initially began my involvement as a private railroad industrial development consultant to the Providence & Worcester Railroad, Rail-Tex, Conrail, and other short line railroads in New England. Currently, I own and operate two common carrier short line railroads, Raritan Central Railway, LLC and the Pennsylvania & Southern Railway, LLC, and one private carrier (unregulated) operation, the New Jersey & Northern Railway, LLC.
3. In 2002, CSX Transportation ("CSXT") originally solicited my interest in acquiring and operating a small cluster of trackage in Poughkeepsie, NY. Although no service had been performed over the subject trackage since 2000, the tremendous traffic potential in the Northeast combined with

the tremendous growth in transload (i.e. truck-to-rail transfer terminals) intrigued me. Furthermore, the substitution of CSXT for Consolidated Rail Corporation as one of the two dominant railroads in the Northeastern States gave me added confidence that I could "breath new life" into what appeared to be moribund trackage. My previous experiences generating substantial traffic on my other lines led me to believe, erroneously as it turns out, that I could be successful on the New York & Eastern Railway.¹

4. With those goals in my, I closed the lease transaction with CSXT around September, 2003. In my efforts to locate and generate business, I approached each of the following customers, Great Eastern, Epco Products, Effron & Son, Propane Company of Fulton Street, and Fairview Business Park.
5. Of these, Great Eastern advised that it was currently trucking about 100-125 carloads of inbound paper annually from a rail siding to its

¹ I am attaching to my statement a copy of an article appearing in the current issue of *Railpace* magazine, which attests to the successful of my marketing efforts on the Raritan Central Railway, LLC. During the 3 years Raritan Central has provided service at the Raritan Center facility in New Jersey, traffic volumes have increased five fold.

Poughkeepsie printing plant. Great Eastern indicated a desire to resume moving this product exclusively by rail. As to the other shippers, Epco, Effron, and Propane Company said they had no interest in using rail. Fairview Business Park advised that it saw no rail potential for its current tenants. I also contacted Ed Murphy, Development Director for the City of Poughkeepsie, who never returned my calls. A meeting with the Dutchess County Development Corporation resulted in no leads or any interest in developing rail business in the City. Finally, the City opposed my use of the Smith Street Yard for use as a transload operation.

6. I have read Great Eastern's protest dated July 22, and filed with the Board on August 2, 2004. Great Eastern states that Petitioners' statement of facts is false and misleading because "we [Great Eastern] was never contacted by any party in regard to reestablishing service." While NY&E cannot respond to any criticisms of CSXT's operations, marketing, and track maintenance, I can state categorically that NY&E did in fact meet with Great Eastern's representatives to

discuss service. Unfortunately, Great Eastern was unwilling to make commitments sufficient to make a restoration of service possible.

7. Finally, Great Eastern's protest does correctly state that the subject line is in very poor physical condition. At the time, NY&E took over operations, it undertook a thorough study of work required to put the line back in an operable condition. Based upon my experience, I estimate that the likely cost of repairs would be in the range of \$2,000,000 just to restore service. Work required would include brush cutting, tree removal, and bridge repairs as well as replacing most of the ties and rail. My inspection of the line reveals that the line has suffered years of deferred maintenance, long predating both NY&E's and CSXT's presence on the line. I'd venture to say that the neglect probably goes back to the Penn Central Railroad's ownership, some 30 years ago.

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing Reply to Protest of Great Eastern Color Lithographic Corporation was mailed by first class mail this 2nd day of September 2, 2004, to the following persons:

Stephen Perretta, Esq.
Great Eastern Color Lithographic Corporation
46 Violet Avenue
Poughkeepsie, NY 12601

Louis Gitomer, Esq.
Ball, Janik LLP
1455 F Street. N.W.
Washington, DC 20005


John D. Heffner

VERIFICATION

STATE OF)
) SS
CITY OF)

Eyal Shapiro, being duly sworn according to law,
hereby deposes and states that (s)he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of (her)his knowledge, information and belief.

Eyal Shapiro

Subscribed and sworn to before me, a Notary Public, in and for
the City of Newton in the State of MA., this 2
day of Sept. 04

Carl L. FraDET

Notary Public

My Commission expires:



CARL L. FRADET
Notary Public
Commonwealth of Massachusetts
My Commission Expires April 3, 2007

