

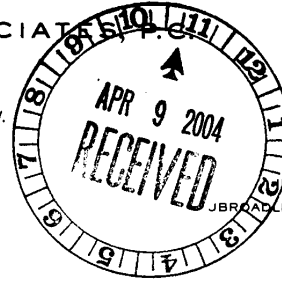
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April 8, 2004

JOHN H. BROADLEY

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W. Suite 700
Washington, D.C. 20423-0001

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

Dear Mr. Williams:

Enclosed for filing in the captioned proceeding please find an original and ten copies of the OPPOSITION OF CHELSEA PROPERTY OWNERS TO THE PETITION OF FORTY PLUS FOUNDATION AND MANHATTAN CENTRAL RAILWAY SYSTEM TO TOLL THE PERIOD FOR FILING OFFERS OF FINANCIAL ASSISTANCE.

I have enclosed an extra copy of the filing with a self-addressed, stamped envelope. Please file stamp the additional copy and return it to me.

I have also enclosed a 3.5 inch diskette with the opposition and this transmittal letter in WordPerfect format.

Should you have any questions, please do not hesitate to call me.

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Public Record

Enclosures

Yours very truly,

John Broadley

John Broadley

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BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Chelsea Property Owners -- Abandonment --
Portion of the Consolidated Rail Corporation's
West 30th Street Secondary Track in New York
City, NY

Docket No. AB-16
(Sub-No. 1094)A



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**OPPOSITION OF CHELSEA PROPERTY OWNERS TO
THE PETITION OF FORTY PLUS FOUNDATION AND
MANHATTAN CENTRAL RAILWAY SYSTEMS TO TOLL
THE PERIOD FOR FILING OFFERS OF FINANCIAL ASSISTANCE**

Forty Plus Foundation and Manhattan Central Railway Systems ("Forty Plus") has filed with a Board a document styled "Notice of Intent to File Offer of Financial Assistance." So far as Chelsea Property Owners ("CPO") can determine, the only relief Forty Plus seeks from the Board with its filing is to toll for 30 days the period for submitting offers of financial assistance. The Board should deny the requested relief.

1. An offer of financial assistance by Forty Plus would be untimely and require rejection if one were ultimately filed.

Forty Plus appears to be under a misapprehension that this proceeding is one seeking an exemption or pursuant to a class exemption and, thus, the notice of intent provision of 49 CFR 1152.27(c)(2)(i) is applicable. As the Board is only too well aware, this proceeding originated in an application for abandonment filed by CPO. Where an application is the basis for an abandonment decision, the procedural requirements for filing of an offer of financial assistance are governed by 49 CFR 1152.27(c)(1), not 49 CFR 1152.27(c)(2).

Under 49 CFR 1152.27(c)(1)(i)(B) an offer of financial assistance must be filed and served no later than ten days after the Federal Register notice of the Commission's abandonment decision. The Federal Register notice of the Commission's decision authorizing abandonment in this case was published in the Federal Register on September 16, 1992, almost 12 years ago. *See* 57 Fed. Reg. 42762, September 16, 1992. As the Commission itself said in this case in denying a petition to reopen its earlier rejection of a *timely-filed* offer of financial assistance (*Chelsea Property Owners*, 1993 WL 274727 (I.C.C.), Served July 22, 1993):

Offerors' allegations of new evidence and substantially changed circumstances similarly do not justify reversal or reopening of the OFA decision. Offerors' request to be allowed to come forward with new evidence to perfect their OFA at this late date ignores the fact that the entire scheme of statutory deadlines associated with abandonments and OFAs was intended by Congress to "[protect] carriers from protracted legal proceedings." Staggers Rail Act of 1980, H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 124 (1980) These deadlines were designed to ensure that railroads would be able to dispose of their property expeditiously and by a date certain. Potential offerors were given only 10 days to file an OFA, and we were given 5 days to rule on them. Barring any extenuating circumstances, to reopen an OFA decision based on allegations of new evidence and changed circumstances would violate the entire thrust of the statutory scheme. Aside from the inevitable delay, it would give potential offerors the opportunity to pursue an OFA well after their due date.

This Board has endorsed its predecessor's view of the statutory time limits applicable to offers of financial assistance. In *Idaho Northern & Pacific Railroad-- Abandonment Exemption -- Wallowa and Union Counties, OR* (2001 WL 1586967 (I.C.C.), served December 13, 2001) the Board addressed an offer of financial assistance filed four years after abandonment was authorized and publication of the notice thereof in the Federal Register (*id.*):

There is no need to consider the NLV of the line because the OFA procedures plainly are no longer available with respect to this line. The statutory time limits that were applicable at the time this abandonment proceeding was instituted for processing such cases and entertaining OFA requests were intended by Congress to protect carriers from protracted abandonment proceedings. See *Chelsea Property Owners -- Abandonment -- Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*; In the Matter of an Offer of Financial Assistance, Docket No. AB-167 (Sub-No. 1094) (ICC served July 22, 1993) (Chelsea) [quoting in footnote]; *Hayfield Northern R.R. v. Chicago & N.W. Transp. Co.*, 467 U.S. 622, 629-31 (1984). * * * There is no precedent to entertain an OFA filed 4 years after its due date, and to do so plainly would be inconsistent with Congressional intent. * * *

Here, there are no conceivable circumstances that would warrant entertaining an offer of financial assistance filed 12 years late, and Forty Plus has pointed to none. The difficulties presented by this case are well known to the Board as are the efforts being undertaken by CPO, the City of New York, and the railroads to find a way to reconcile their conflicting interests. Allowing Forty Plus to file an offer of financial assistance at this late date would be directly contrary to the language of the statute, the regulations, and the Congressional policies which this Board and the Commission have recognized as being applicable to offers of financial assistance. It would also undermine the efforts of the parties to resolve the complicated issues this case presents for them.

2. Forty Plus's request to toll the period for filing offers of financial assistance is untimely and should be denied.

Forty Plus has asked the Board to toll the period for filing offers of financial assistance "for an additional 30 days." This request appears to be predicated on Forty Plus's mistaken assumption that this proceeding is subject to 49 CFR 1152.27(c)(2)(i) which provides that

Submission of a formal expression of intent under this subsection will automatically stay the effective date either of the decision granting an

individual exemption or the notice of exemption under the class exemption for 40 days

As we have pointed out above, this is not an exemption proceeding and the applicable regulatory provisions governing filing of offers of financial assistance are found in 49 CFR 1152.27(c)(1)(i)(B). This section provides that offers of financial assistance must be filed *within 10 days of the publication of notice of the abandonment decision in the Federal Register*. The only provision for tolling the 10 day period for submitting offers of financial assistance under Section 1152.27(c)(1) is contained in Section 1152.27(c)(1)(i)(C) which authorizes the Board to entertain a petition to toll the 10 day time period in the event that, after a bona fide request, the applicant has failed to provide a potential offeror with the information required under paragraph (a) of section 1152.27 and that information is not contained in the application. The tolling section provides, however, that:

Petitions must be filed with the Commission *within 5 days after publication in the Federal Register* (described in paragraph (b) of this section).

Just as a future offer of financial assistance from Forty Plus would be untimely by almost 12 years, so is Forty Plus's request to toll the 10 day time period. Such a petition was due on September 21, 1992, not April 1, 2004.

CONCLUSION

For the reasons set forth above, the Board should reject Forty Plus's request to toll the time period for filing offers of financial assistance on two grounds:

First, Forty Plus's petition to toll the running of the time for filing an OFA is untimely by almost 12 years; and

Second, permitting Forty Plus to file an offer of financial assistance in this proceeding almost 12 years after the Commission approved the abandonment of the Highline would be inconsistent with the statutory scheme and Congressional intent as explained by the Board in *Idaho Northern* and *Chelsea* cited above.

Respectfully submitted,

CHELSEA PROPERTY OWNERS

By: John Broadley
One of its attorneys

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Dated: April 8, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April 2004 I caused a copy of the foregoing OPPOSITION OF CHELSEA PROPERTY OWNERS to be served on parties to this proceeding by depositing copies thereof, postage prepaid, in the United States mail addressed to counsel for such parties listed on the attached mailing list.

John Bradley

Dated: April 8, 2004

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