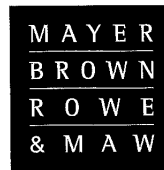


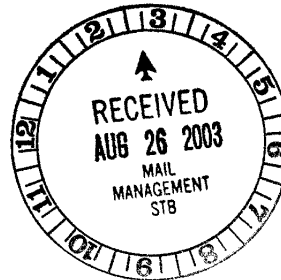
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August 26, 2003

BY HAND-DELIVERY

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 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

ENTERED
Office of Proceedings

AUG 26 2003

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of
"Statement of Consolidated Rail Corporation in Response to July 29, 2003 Order of the Board."
Please date-stamp the extra copy that is enclosed and return it to our representative.

Sincerely yours,

Robert M. Jenkins III

RMJ/bs

Enclosures

208785

BEFORE THE
SURFACE TRANSPORTATION BOARD



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, N.Y.

**STATEMENT OF CONSOLIDATED
RAIL CORPORATION IN RESPONSE TO
JULY 29, 2003 ORDER OF THE BOARD**

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Public Record

By order served July 29, 2003, the Board directed the parties to submit briefs on the issue of whether the Board may issue a certificate of interim trail use ("CITU") under 49 CFR 1132.29 in an adverse abandonment proceeding. Consolidated Rail Corporation ("Conrail") takes no position on this novel legal issue, other than to encourage the Board to decide the issue as soon as reasonably possible. Conrail and CSX Corporation and CSX Transportation, Inc. ("CSX") have spent millions of dollars in maintenance expenses, property and other taxes, and counsel and consulting fees in connection with the Highline since the railroads' efforts to reach a Settlement Agreement began over four years ago. Additional delay in resolving the disposition of the Highline will impose substantial additional costs on the railroads.

Conrail wishes to stress that even assuming the Board has authority to issue a CITU in an adverse abandonment proceeding, the statute and the Board's regulations require the railroads' agreement before a CITU may issue. 16 USC 1247(d); 49 CFR 1152.29(b). Conrail and CSX have set forth in considerable detail, in their replies filed January 13, 2003, to the City of New

York's petition to late-file a CITU request, exactly what assurances the railroads require from the City and State of New York to agree to the issuance of a CITU. Unless and until the railroads receive those assurances and agree to the issuance of a CITU, there is no point in the Board addressing the City's most recent request to extend from 180 to 270 days the period for negotiation of a trail use agreement after issuance of a CITU. *See* Statement of the City of New York, NY, filed July 17, 2003, at 6-8. The City's request would be premature even if a CITU had issued. There is no reason to think that if the railroads have already received the necessary assurances, it will take more than the statutorily prescribed 180-day time period to negotiate a trail use agreement. In any event, the railroads' concurrence would be required to extend the time period for negotiations. *See* 49 CFR 1152.29(c)(1).

Conrail continues to have considerable doubt, even assuming that the issuance of a CITU is legal in an adverse abandonment context, whether the necessary funding and broad public-agency participation required for trail use of the Highline will be forthcoming. Accordingly, Conrail agrees with the Metropolitan Transportation Authority ("MTA") and the New York Convention Center Development Corporation ("Javits Center") that the Board should proceed to rule on the motion filed August 14, 2002, by the Chelsea Property Owners ("CPO"), seeking confirmation that the form of Settlement Agreement hammered out by the parties over the past several years meets the indemnity conditions of the ICC's and the Board's 1992 and 1999 decisions. *See* Motions filed by MTA and Javits Center on January 24, 2003. As the Javits Center observed in connection with the Board's public hearing in New York City on July 24, 2003, the Board's confirmation that the Settlement Agreement, if implemented as written, would meet the ICC's and the Board's conditions, could provide "the basis for prompt demolition of the

entire [Highline] in the event that railbanking negotiations fail.” Statement filed by Javits Center on July 17, 2003, at 4.

Contrary to the position taken by some parties in this proceeding, CPO’s pending motion involves a real controversy. The Friends of the High Line (“FHL”) in particular has claimed that the key indemnification provisions of the Settlement Agreement do not meet the requirements of the ICC’s 1992 decision, because those provisions do not provide adequate protection for Conrail against environmental liability. *See* FHL’s Opposition filed September 6, 2002, at 6-8. Conrail disagrees with FHL’s position. *See* Conrail’s Reply filed September 12, 2002, at 2 n.1. A decision by the Board that the proposed Settlement Agreement adequately protects Conrail against all types of liability, within the meaning of the ICC’s and Board’s 1992 and 1999 decisions, would remove any uncertainty on this point, and pave the way for the parties to address any remaining contractual and funding issues without fear of having the key indemnification and release provisions of the Agreement collaterally attacked before the Board.

The City on July 30, 2003, filed a letter with the Board opposing the Board’s issuance of an opinion on the sufficiency of the Settlement Agreement, on the ground that some aspects of the Agreement might change before it could be signed by all parties. But the key indemnification provisions in the Agreement are unlikely to change, and getting the Board’s affirmation that those provisions comply with the ICC’s and the Board’s 1992 and 1999 decisions will move the parties an important step closer to possible resolution of this long-standing matter.

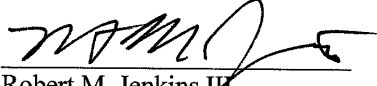
In its July 30 letter, the City also raised questions about whether there might be legal impediments to the City’s issuance of demolition permits at this juncture and whether, without the City’s cooperation, all of the tax benefits of the current Settlement Agreement could be

realized. The City did not suggest, however, that the Board should opine on these questions, which in no way militate against a prompt decision by the Board on the sufficiency of the Settlement Agreement to meet the requirements of the ICC's and Board's decisions.

Conrail and CSX have devoted enormous time and expense to the matter of the Highline. We have worked hard to try to accommodate the interests of as many parties as possible, but the current state of limbo should not be allowed to continue.¹ Once again, Conrail encourages the Board to move forward as rapidly as reasonably possible to decide the motions before it.²

Respectfully submitted,

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Dated: August 26, 2003

¹ In addition to CPO's motion for a declaratory order regarding the Settlement Agreement and the City's motion to late-file a CITU, the Board continues to have before it FHL's petition, filed August 16, 2002, to reopen the ICC's 1992 decision on environmental and historic preservation grounds. Conrail neither supports nor opposes that petition, but we wish to stress that FHL petitioned to reopen the 1992 decision only on environmental and historic preservation grounds. No party has suggested that the great bulk of the ICC's 1992 decision, concerning the ICC's economic analysis of the adverse abandonment petition filed by CPO, should be reopened.

² We are authorized to state that CSX Corporation and CSX Transportation, Inc. join in the views expressed above.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Statement of Consolidated Rail Corporation in Response to July 29, 2003 Order of the Board have been served this 26th day of August 2003, by hand-delivery or first-class mail, postage prepaid upon the following persons.

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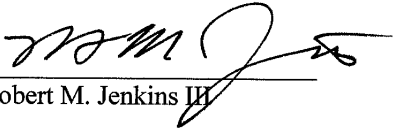
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