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13 January 2004

Ms. Rini Ghosh
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: City of Venice -- Abandonment Exemption,
AB 863

Dear Ms. Ghosh:

This letter, on behalf of City of Venice, is in response to the letter of January 9, 2004, to you by Mr. Fritz Kahn on behalf of Terminal Railroad Association of St. Louis (TRRA).

1. Reliance on ER. The gravamen of Mr. Kahn's letter is that STB, in preparation of its Environmental Assessment (EA) in this proceeding, should not have relied upon the Environmental Report (ER) submitted by City of Venice. Mr. Kahn claims the ER is improper under 49 C.F.R. § 1105.7(c) because City failed to consult with certain state and federal environmental agencies listed in § 1105.7(b) prior to preparing the ER.

Respectfully, this Board's regulations call for consultation "in preparing" the ER, not "prior to preparing" the ER. The thrust of the regulations is that the § 1105.7(b) agencies have an adequate opportunity to consider the environmental issues involved in a proposed abandonment authorization and can make their views known to STB.

The Board's regulations provide for transmittal of the ER to the § 1105.7(b) agencies pursuant to a specified form of letter which invites comment on the ER. See 49 C.F.R. § 1105.11. Under 49 C.F.R. § 1105.7(b), the ER must be circulated for comment/consultation "[a]t least 20 days prior to filing with the Board." Compliance with this requirement ordinarily constitutes consultation "in preparing" the ER, except where more time is required for meaningful comment. Agencies either make their comments (consult) or seek more time through informal channels, or by filing motions with the agency. At least at this time, agencies who wished to comment did so, and no agency is complaining about inadequacy of consultation here, either informally or by motion, to City of Venice's knowledge.

Moreover, City's ER was based upon the ER (which was attached) and the record of consultation in an earlier proceeding involving City of Venice's lessee, Norfolk & Western Railroad. That proceeding covered Venice's lessee's termination of its own common carrier obligations as to the line at issue in this proceeding, as well as additional trackage. The earlier consultation addressed basically the same issues. The Board's regulations do not prohibit one carrier from relying on the environmental consultation of another when parallel rights are involved on the same property. Such reliance is not unusual, and avoids unnecessary redundancy and administrative burden. In other words, even if Mr. Kahn for TRRA is correct that § 1105.7(c) requires consultation "prior to" preparing an ER, that has happened here. In addition, City's agents consulted with Illinois Department of Transportation to determine that Illinois DOT had complied or was complying with applicable environmental and historic preservation requirements for its planned rehabilitation of the McKinley Bridge. Illinois DOT assures City that it is complying with all applicable requirements.

Mr. Kahn for TRRA appears to admit that City of Venice's ER was circulated for comment to the § 1105.7(b) agencies no later than October 28, 2003. Venice filed the ER with STB as part of City of Venice's Notice of Exemption on December 9, 2003 (see STB website). Venice also filed all written comments from agencies received to date. The total lapsed time for the consultation was thus 41 days, which was in excess of the 20 day minimum.

Mr. Kahn's letter for TRRA is accordingly erroneous in asserting that the Environmental Report (ER) is procedurally defective. As a result, TRRA's contention that the EA improperly relies on the ER is also wrong.

More broadly, Mr. Kahn's approach to the regulations is unnecessarily stilted. Circulation of an ER assists the agencies in question in identifying relevant issues and indeed in identifying the line in question so they can meaningfully comment. At least in the context of two-year out of service abandonments, which are processed on a faster track because they presumably involve fewer economic and environmental issues, this seems an obvious approach, especially for a line as pre-analyzed as this one. It seems entirely reasonable to prepare an ER based on information at hand (especially given all the prior agency consultation here) in this proceeding, and to invite comment upon it, as was done here. If further agency comment on the ER required amendment of the ER, then that could be done for re-circulation and filing with the Board. No amendment was necessary here. As a kind of confirmation, TRRA's letter is obviously bereft of any substantive environmental issues.

2. Jurisdiction. Mr. Kahn for TRRA also incorporates by

reference certain "comments" which he filed on behalf of TRRA dated December 29, 2003, on which basis he asserts that City of Venice is not and has never been a common carrier. The referenced "comments" amount to a Petition for Reconsideration. If the Surface Transportation Board in dealing with the referenced "comments" ultimately finds that City of Venice was never a common carrier, then this entire proceeding will presumably be dismissed, and the issues raised by Mr. Kahn for TRRA in his letter to you dated January 9, 2004, will be moot. But whether City of Venice holds/held common carrier obligations is for the Board to decide, not for the Section on Environmental Analysis (SEA). Thus, Mr. Kahn's remarks for TRRA regarding common carrier status do not appear relevant to SEA's work on the EA. City of Venice has not yet responded to the referenced December 29 "comments" of TRRA. However, City of Venice has responded to a Stay Petition filed by Mr. Kahn on or about January 6, 2004, which is based on those "comments." City of Venice hereby incorporates by reference its Opposition to TRRA's Stay Petition, which Opposition is dated January 12, 2004, and which should appear as filed on or about January 13. The Opposition briefly discusses the error in TRRA's arguments.

3. Railbanking/trail use. TRRA's sole grounds for arguing that the Environmental Assessment (EA) prepared by STB errs in concluding that the right of way may be suitable for railbanking and trail use is that the STB lacks jurisdiction on the ground that City of Venice holds no common carrier obligation. That legal objection is for the Board to decide in response to TRRA's comments. Once again, City of Venice views the objection as erroneous for the reasons discussed briefly in City's Opposition dated January 12, 2004. City of Venice understands that Madison County Transit continues to view the right of way as a potential rail corridor, especially for light rail expansion, and that the corridor, including the approaches to the McKinley Bridge, would be desirable to preserve for the St. Louis region's growing system of bicycle and pedestrian trails.

In sum, Mr. Kahn's letter does not state a valid objection to the EA or anything in the EA.

If there are any questions raised by Mr. Kahn's letter not fully addressed above, please advise.

Respectfully submitted,


Charles H. Montange
for City of Venice

cc. Fritz Kahn, Esq.
Hon. Vernon Williams, Secretary, STB