SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In re the application of:
NEW YORK PUBLIC INTEREST RESEARCH GROUP STRAPHANGERS CAMPAIGN, Inc.,

Petitioner,

- against -

METROPOLITAN TRANSPORTATION AUTHORITY, a.k.a. MTA, NEW YORK TRANSIT AUTHORITY, Peter S. Kalikow, Chair/Commissioner of the Metropolitan Transportation Authority and Lawrence G. Reuter, as President of MTA New York City Transit Authority,

Respondents.

IAS Part 2
(Justice York)

107871/03

MEMORANDUM OF LAW IN OPPOSITION
TO REQUEST FOR INTERIM INJUNCTIVE RELIEF

INTRODUCTION

Respondents Metropolitan Transportation Authority, a.k.a. MTA, New York Transit Authority, Peter S. Kalikow, Chair/Commissioner of the Metropolitan Transportation Authority and Lawrence G. Reuter, as President of MTA New York City Transit Authority (collectively, "Respondents"), submit this memorandum of law in opposition to the request by petitioner New York Public Interest Research Group Straphangers Campaign, Inc., seeking injunctive relief restraining the increase in bus and subway fares in the City of New York scheduled to go into effect on May 4, 2003.

Petitioners request that this Court intervene in the MTA's quasi-legislative determination as to how to close a significant budget deficit facing the MTA is without merit.

The MTA is required by the Public Authorities Law to set fares "as may in the judgment of the authority be necessary to maintain the combined operations of the authority and its subsidiary corporation on a self-sustaining basis." PAL § 1266(3); *see also* PAL § 1205(1) (applicable to the New York City Transit Authority).

Petitioner fails to present any justification for judicial intervention into the judgment of the MTA to set the fares as necessary to help close the budget gap.

The Straphangers' primary reliance on reports of the State and City Comptrollers is unavailing. While broadly critical of the MTA budgeting process, the State Comptroller, in particular, admits that it would have been "imprudent" for the MTA to have avoided a fare increase in 2003 by allocating all available one-time cost savings to this fiscal year, as opposed to the MTA's decision to apply savings over the course of the two years (2003 and 2004) remaining in its multi-year financial plan. The mischaracterization that applying a portion of those available savings to 2004, constitutes "hiding" MTA funds otherwise available for 2003 cannot constitute a base for judicial intervention. Indeed, it has been publicly known for months that the MTA was applying savings over two years rather than one.

Nor do the Straphangers satisfy their burden on this application[1] by adopting allegations from the State Comptroller's report criticizing the MTA's alleged failure to disclose all of its budgeting back-up documents to the public. Aside from the fact that all pertinent information has been disclosed, it is most telling that the State Comptroller, after scrutinizing 18

[1] This action/proceeding was brought in the name of one plaintiff, a not-for-profit corporation. In the "petition," it claims to be seeking declaratory relief, typically requested in an action at law. The Order to Show Cause suggests on its face that a summons was being served - - also consistent with an action of law - - but the memorandum inexplicably refers to this as an Article 78 proceeding; as a further matter of confusion, petitioner claims to be seeking relief with respect to halting commuter rail fare increases, yet no such relief is contained in the Order to Show Cause or in the decretal paragraphs of the petition itself.

boxes of MTA budgeting documents, does not disagree that the MTA is facing enormous deficits and that a fare hike is ultimately necessary.

Whatever the complaints about MTA disclosure practices, at the end of the day, there is no dispute that significant deficits exist and that a fare increase -- the first in seven years -- is necessary. On this record, there is no basis for the Court to intervene in the quasi-legislative determination of the MTA Board. To the extent there are deficiencies regarding disclosure practices (of which there are none), the issue should be addressed administratively or by the Legislature. The Court should decline the invitation to usurp the judgments properly exercised by respondents on March 6, 2003.[2]

To be entitled to injunctive relief, petitioners must show both a likelihood of success on the merits of their complaint, and irreparable harm in the absence of injunctive relief. They have shown neither.

As an initial matter, the fare increase is non-justiciable. Whether and when a fare increase should be implemented has been committed to the discretion of the Authorities under Section 1205(1) of the Public Authorities Law (for transit fares) and PAL Section 1266(3) (for commuter rail fares). These are issues about which Courts routinely decline to entertain jurisdiction for sound policy reasons based upon the separation of powers doctrine and non-justiciability of what are, essentially, political questions.[3]

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[2] The Straphangers commenced this action, and sought injunctive relief, less than twenty-four hours ago. Accordingly, this response is necessarily limited, and respondents hereby request a further opportunity to respond to this hybrid Article 78 proceeding/plenary action, independent of the hearing scheduled for May 1, 2003.

[3] There is simply *no need* to adjudicate *now* the request with respect to enjoining token booth closings, as no urgency has been shown. Those closings are to begin to be implemented in the summer, and there is ample time to brief the merits of the Straphangers complaint with respect to those anticipated closures. The Court should decline to order any relief until this matter has been fully briefed.

Even if this Court were to address the issues, however, respondents fully complied with the public hearing requirements of Public Authorities Law §§ 1205 and 1266 Neither of these provisions of law, nor any other statute, requires respondents to propose to the public budgetary options which the State Comptroller himself has deemed fiscally imprudent.

Notably, there is no dispute that MTA was facing a considerable deficit for fiscal years 2003 and 2004. This being undisputed, the MTA had full authority to, in furtherance of its statutory obligation to be self-sustaining, set an increase it deemed necessary or desirable to accomplish that goal. Petitioner cannot succeed in its attempt to substitute its judgment for that of the MTA.

Nor does petitioner have standing to bring this action. Even if it did, however, it cannot show the requisite irreparable harm. Petitioner's concerns are of a monetary nature, which simply do not amount to *irreparable* harm. By contrast, ordering any delay in the implementation of the transit fare increase would cause chaos and confusion, if it could even be accomplished at all, since all programming effort and physical work has already been implemented and cannot be "undone" absent extraordinary effort and physical work at great cost to re-program each bus, turnstile and other equipment in the system. If the Court were to order a halt, we cannot guarantee that this order could be fully complied with prior to 12:01 a.m. on May 4, 2003. In any event, the costs of even attempting to comply with such an order would be extraordinary. Petitioner urges this Court to inflict those costs and chaos, yet does not even offer to post a bond to reimburse the public for millions of dollars in expenses incurred and revenue lost should its ultimate request for relief be denied.

I. **Courts Have, For Good Reason, Declined To Entertain Requests To Enjoin the Raising of Fares**

Defendants are unaware of any case -- and petitioners have cited none -- where the courts have blocked a decision to raise Transit Authority subway and bus fares or MTA commuter rail fares.

As court upon court has held, this matter is committed to agency discretion and a court should not substitute its own judgment. The MTA and TA are statutorily required to operate on a self-sustaining basis. Indeed, the MTA issues debt predicated, in part, on the expectation that fare revenue will flow with sufficient certainty so that underwriters can be assured that debt service obligations will be met on a timely and expected basis. So, too, employees, vendors and contractors all expect to be paid as obligations become due. Courts routinely have dismissed challenges to fare increases: some on grounds of standing; some on grounds that the power to raise fares is quasi-legislative in nature or is otherwise delegated to the Authorities without judicial review; or for other, equally valid reasons. *See Stein v. MTA*, 110 Misc.2d 1027, 443 N.Y.S.2d 340 (Sup. Ct. Nassau Co. 1981) (court declined to grant declaratory relief invalidating fares, noting that courts are "certainly ill equipped" to run railroads, and holding that "petitioners lack standing to challenge the determination by the MTA that a fare increase was economically necessary"); *New York Urban League and Straphangers Campaign v. State of New York*, 71 F.3d 1031 (2d Cir. 1995) (plaintiffs challenging a fare increase did not meet the standards for injunctive relief); *Weiss v. City of New York*, 52 Misc.2d 391, 275 N.Y.S.2d 557 (Sup. Ct. N.Y. Co. 1966) (request for declaratory relief with respect to a fare increase denied, the court noting that Section 1205 of the Public Authorities Law empowers the Transit Authority to adjust the fares when *it* deems it necessary in order to maintain its operations on a self-sustaining basis); *All Peoples Congress v. MTA*, 147 Misc.2d 1020, 559

N.Y.S.2d 462 (Sup. Ct. N.Y.Co. 1990) (authority to raise fares and SEQRA exemption for fare increases valid and rational in light of statutory requirements that the Authority operate on a self-sustaining basis); *County of Nassau v. MTA*, 57 Misc.2d 1025, 293 N.Y.S.2d 1017 (Sup. Ct. Nassau Co. 1968), *aff'd*, 32 A.D.2d 647 (2d Dep't 1969) (in setting fares, MTA is a quasi-legislative body; the only limitation on setting the fare is that a public hearing be held: "Since this was a quasi-legislative hearing, any disagreement with the MTA's conclusion is no ground for finding [the fare increase] illegal ... the relief ... for any unreasonable fare increase must be supplied by the State Legislature, the body which granted MTA such sweeping power."); *Glen v. Rockefeller*, 61 Misc.2d 942, 307 N.Y.S.2d 46 (Sup. Ct. N.Y.Co.), *aff'd*, 34 A.D.2d 930 (1970) (noting the "broad discretion" given the Transit Authority to raise subway and bus fares under Section 1205(1) of the Public Authorities Law: "there appears to be no way in which petitioners, or any other individual citizen of this community can properly place before a judicial tribunal either the propriety or legality of the exercise of judgment vested by the Legislature in the members of the Transit Authority which resulted in the subject increase of fare in the City of New York.")

There is simply no judicial support for enjoining a fare increase, even temporarily.

II. Sound Principles Underlying the Doctrine of Justifiability Preclude The Court from Considering Petitioner's Claims

A. The Claims Raised Are Not Justiciable

The thrust of petitioner's argument really amounts to an attack on the wisdom of respondents' judgment in deciding that fare increases and associated budgetary measures must be implemented. Petitioner does not claim that there is any statute upon which it can rely that would prohibit respondents from implementing either the fare increases or the token booth closings. Rather, it questions whether this should be done at this time.

Petitioner asks this Court to review the wisdom of these actions; but its subjective belief that a fare increase may not be needed does not make a claim justifiable, or cognizable. The courts have repeatedly held that the Transit Authority and MTA are free to make financial and operational decisions without judicial oversight. The concerns raised by petitioner and its affiants here raise what are referred to as "political" and not "judicial" questions. The courts, accordingly, for sound policy reasons, decline to entertain claims to enjoin such decisions and have treated similar requests for injunctive relief as nonjusticiable because they challenge what are essentially discretionary acts of a public agency relating to the delivery of public services or the allocation of public resources. *See, e.g., McKechnie v. New York City Transit Police*, 130 A.D.2d 466, 515 N.Y.S.2d 48 (2d Dep't 1987) (challenge to manner of deployment of Transit Authority police is not justiciable, notwithstanding claims of unsafe work locations). *See also Abrams v. New York City Transit Authority*, 39 N.Y.2d 990, 387 N.Y.S.2d 235 (1976) ("questions of ... allocations of resources and priorities [are] inappropriate for resolution in the judicial arena ..."); *Municipal Testing Laboratory, Inc. v. New York City Transit Authority*, 233 A.D.2d 105, 106, 649 N.Y.S.2d 426, 427 (1st Dep't 1996) (award of contract "was a matter within the [Transit] Authority's discretionary management of its operations, and therefore not justiciable ...."); *Jamaica Chamber of Commerce v. Metropolitan Transportation Authority*, 159 Misc. 2d 601, 608 N.Y.S.2d 758 (Sup. Ct. Queens Co. 1993) ("a governmental or municipal agency is free to perform its discretionary acts relating to the delivery of services or the allocation of resources without judicial oversight."). These decisions involving the Transit Authority are consistent with decisions finding nonjusticiable disputed acts of other governmental agencies that operate under New York State law. *See, e.g., New York State Inspection, Security and Law Enforcement Employees v. Cuomo*, 64 N.Y.2d 233, 485 N.Y.S.2d

719 (1984) (decision to close correctional facility nonjusticiable); *Ferrer v. Quinones*, 132 A.D.2d 277, 522 N.Y.S.2d 547 (1st Dep't 1987) (decision to close school, which was challenged based on disagreement over how best to educate students, was nonjusticiable).

The doctrine of justiciability derives from the fact that each coordinate branch of government should be free to conduct its affairs. Absent a legislative directive compelling the actions of a government body, the executive/administrative branch is free to conduct its affairs without judicial interference. *See New York State Law Enforcement Employees*, 64 N.Y.2d at 239, 485 N.Y.S.2d at 722 ("each [executive] department of government should be free from interference ... by either of the other branches ... [Accordingly, executive agency actions that] involve questions of judgment, allocation of resources and ordering of priorities ... are generally not subject to judicial review.") Petitioners are attempting to have this Court decide complex issues of transportation planning, financing, budgeting, delivery of services and allocation of resources. It is precisely these types of issues that are wisely committed to executive and legislative officers to decide, and not the judiciary.

B. In Any Event, The Decision To Raise Fares and Implement Other Budgetary Measures Is a Fiscally Sound And Prudent One

Even if this dispute were justiciable, the respondents' decisions are not clearly irrational and thus cannot be considered arbitrary or capricious. MTA's judgment whether to adjust the fares as it deems necessary to ensure the continued viability of the nation's largest transit system is firmly rooted in the public policy of the state as reflected in its governing legislation. Thus, PAL § 1205 directs that the Transit Authority adjust the fare so as to allow the operation of the system in a self-sustaining manner; and, as fare box revenues represent the security for bonds sold to support the capital program, PAL § 1266-(3) exempts the Authorities from the otherwise applicable provisions of SEQRA so as to permit implementation of fare

increases in a sufficiently expeditious manner to maintain bond marketability. It would be impossible for MTA to meet its statutory mandate to the public and its contractual commitments to bond holders if fare increases could be enjoined at the literal stroke of midnight by nothing more than an assertion that one element of a complex decision-making process giving rise to the determination to increase fares was less artfully communicated than a petitioner (or city or state comptroller) might otherwise have preferred.

Viewed in the light most favorable to petitioner, the claim presented at bar represents an assertion that, during the course of the public disclosures surrounding the 10 public hearings relating to pending fare increase, MTA failed to advise that certain non-recurring revenue was being equally allocated to 2003 and 2004. In petitioner's view, had all of the savings been allocated to 2003, the fare increase may have been delayed (albeit, the increase in 2004 would then have been undeniably greater, and the State Comptroller has advised that such allocation would have been "imprudent.") There is no credible assertion that revenues or subsidies were excluded from the two-year budget nor that expenses were deliberately exaggerated. Putting aside for the moment that even the claim which petitioner does assert is factually wrong – the public disclosures did include reference to the allocation of the refinancing savings -- it cannot be contended that any such "failure" on MTA's part could constitute an appropriate basis for enjoining a fare increase. MTA's total budget for 2003 through 2004 is, of course, many billions of dollars. It is necessarily replete both with numerous applications of judgment as to how particular revenue sources and expenses should be allocated and with various estimated forecasts relating to the future state of the economy, government subsidies and the like. If a fare hike could be stopped based solely upon the fact that any one such element of the multi-faceted decision-making process could have been more fully articulated (far less one so

seemingly non-controversial as the allocation of one source of increased revenue evenly over the two years), it is difficult to imagine how any proposed increase could ever be successfully implemented.

As to petitioner's claim that the MTA "revised its financial projections" after the fare increase was put into effect, petitioners fail to realize that those "revisions" were precisely for the purpose of taking into account the impact of the approved fare increase and other budgetary matters on the deficit. Accordingly, the so-called "surplus" projected was *as a result* of, among other measure the fare increase. It is certainly not a basis to enjoin such increase.

As to petitioner's suggestion that the MTA may only be self-sustaining on a single year, rather than multi-year basis, this assertion is simply wrong. Contrary to petitioner's outright misstatement at page 21 of their brief, there is no requirement in PAL § 1266(3) that the MTA consider only current year debt requirements. Rather, the "self-sustaining" obligations of the MTA have been recognized as a requirement that the MTA "run the transit system like a business . . . . [and] recognized business practices should be permitted it. . . ." *Civil Service Forum v. New York City Transit Authority*, 4 A.D.2d 117, 127, 163 N.Y.S.2d 476, 485 (2d Dep't 1957). Multi-year planning is clearly one such recognized business practice.

There exists no statutory or other legal requirements that MTA disclose any information relative to the detailed components of budgetary documents in scheduling public hearings. MTA cannot be enjoined from ultimate implementation of the increase for the mere "failure" to have communicated one (eminently reasonable) element of the its decision-making in a particular manner.

The claims are not justiciable.

III. PETITIONER LACKS STANDING TO MAINTAIN AN ACTION

A. Petitioner Lacks Associational Standing

Petitioner has neither associational nor organizational standing, which are well established prerequisites to bringing this action. One of the requirements for such standing is whether one of the members of the organization would have standing to sue. *Society of the Plastics Industry, Inc v. County of Suffolk*, 77 N.Y.2d 761, 775 (1984); *See also, Matter of Transactive Corporation v New York State Dept. of Social Services*, 92 N.Y. 2d 579 (1998).

Petitioner describes itself simply as "an organization which advocates... for the residents of New York City "(Verified Petition, ¶ 1). Nowhere in its Petition is there any reference to members, number of members or their interests. It is thus impossible to determine from the petition the basis upon which the Straphangers alleges that it has standing to seek injunctive relief. Additionally, there are no individual petitioners that have allegedly suffered injury-in-fact that would confer standing here. *See generally Matter of Dairylea Cooperative v. Walkley*, 38 NY2d 6 (1975).

B. Petitioner Lacks Standing Under State Finance Law § 123-b

As a matter of well-settled law, petitioner lacks capacity to bring the instant action under the statute upon which it relies, New York State Finance Law Article 7-A, §123-b. Only "citizen taxpayers" are entitled to maintain an action under that statute, and, as courts repeatedly have held, petitioner is not a citizen taxpayer. *Sullivan v. Siebert*, 70 A.D.2d 975, 417 N.Y.S.2d 129, 130 (3d Dep't 1979). (NYPIRG not a citizen taxpayer with standing to sue under Article 7-A); *Mylod v. Pataki*, 171 Misc.2d 556, 654 N.Y.S.2d 946, 949 n.3 (Sup. Ct. Alb. Co. 1996) (NYPIRG is "a not-for-profit and thus not a citizen taxpayer" under Article 7-A.)

Nor is there any basis for expending the express limitations of that statute. New York courts have warned that, "[w]here the Legislature has authorized a limited taxpayer's suit, the statute is controlling and the court should not confer ... standing because doing so would ignore the expressed legislative policy to the contrary." *Mylod*, 654 N.Y.S.2d at 949 (*citing Chester Civic Improvement Ass'n v. New York City Transit Auth.*, 122 A.D.2d 715, 505 N.Y.S.2d 638 (1st Dep't 1986)). Here, Section 123-b controls as to which persons may bring an action under Article 7-A of the State Finance Law. Petitioner is not within the limited class of persons set forth in Section 123-b and, hence, lacks standing to maintain the instant action.

So, too, an action by NYPIRG under Section 51 of the General Municipal Law was dismissed because NYPIRG was not a "taxpayer" with standing to sue under that statute. *See New York Pub. Int. Research Group, Inc. v. Bd. of Assessment Review of the City of Albany*, 104 Misc.2d 128, 427 N.Y.S.2d 665 (Sup. Ct. Alb. Co. 1979). Like Section 123-b of the State Finance Law, Section 51 of the General Municipal Law allows only a limited class of persons to sue under the statute. Accordingly, as the court explained,

> [w]e are not concerned with general rules of standing ... where courts are free to broadly construe terms such as 'aggrieved' in order to promote expanding concepts of standing, but rather, we deal with a statute which sets forth certain conditions precedent that a plaintiff must meet before he is entitled to maintain the action.

Id. at 667. Accordingly, the court dismissed NYPIRG's action for lack of standing.

Petitioner has failed to satisfy the conditions precedent that persons must meet before they are entitled to maintain an action under Article 7-A of the State Finance Law, and has no standing to raise the claims made for injunctive relief.

IV. Petitioner Has Not Sustained Irreparable Injury

Petitioner has not shown that its injury is irreparable should its motion for injunctive relief be denied. It is a well established common law principle that such a showing of irreparable harm is a prerequisite for injunctive relief. *See Winkler v Kingston House. Auth.*, 238 A.D. 2d 711, 656 N.Y.S.2d 421 (3d Dep't 1997); *Rosa Hair Stylists v Jaber Food Corp.*, 218 A.D.2d 793, 631 N.Y.S.2d 167 (2d Dep't. 1995); *Jurlique, Inc. v Austral Biolab Pty*, 187 A.D. 2d 637, 590 N.Y.S.2d 235 (2d Dep't 1992). Indeed, the fact that, as in the case here, Petitioner's asserted injury would be compensable through an award of damages warrants denial of injunctive relief. *401 Hotel, L.P. v MTI/image Group, Inc.*, 647 N.Y.S.2d 318, 251 A. D. 2d 125, 647 N.Y.S.2d 318 (1st Dep't 1998); *Kolodziej v Martin*, 249 A.D.2d 941 (4th Dep't 1998), leave to appeal dismissed, 92 N.Y. 2d 919 (1998). In the event that the proposed fare increase is struck down by the Court, the alleged injury sustained by members of the public could be largely redressed through a future temporary discounted fare, for example. Thus, as transit riders could be made substantially whole through a remedy that is in the nature of damages, petitioner has failed to show irreparable harm. By contrast, delaying the fare increase will have significant repercussions since all of the programming and physical work necessary to effectuate the change has already been accomplished. Even if the respondents could comply with an order delaying the fare increase, which is unlikely, it would be extraordinarily expensive to do so. In addition, there would be tremendous confusion created among the riders and private merchants who sell Metro Cards. Finally, it should be noted that Petitioner brought this proceeding only four days before the transit fare increase was scheduled to go into effect, despite the fact that the allocation of certain proceeds over a two year period had been disclosed to the public as early as November 2002. (Caplan Aff. ¶ 13.) Under such circumstances, the equitable doctrine of laches should bar this proceeding. *See NYPIRG v Levitt*, 62 A.D.2d 1074, 404 N.Y.S.2d 55 (3rd Dep't. 1978).

V. There Is No Basis For Judicial Intervention Based Upon The Notices Of Public Hearing Notices

Respondents complied fully with the obligations imposed by the Public Authorities Law to hold public hearings in advance of the MTA's Board's action on March 6, 2003. Indeed, the MTA went well beyond what was required by statute by holding ten separate public hearings, throughout the MTA's service area. The notices for these hearings specifically set forth the possible actions that the MTA might take with respect to an increase and enabled the public to comment fully on the MTA's proposed action.

Petitioner relies on four cases to support its claim that the notices were legally insufficient and that somehow this should be the basis for injunctive relief. None of these cases even deals with hearings related to fare increases, much less do they lend support, even remotely, to this contention with respect to injunctive relief.

Reziek Inc. v. Exxon, 42 A.D.2d 500, 349 N.Y.S.2d 14 (2d Dep't 1973), involved an issuance of a special use permit. There, the court inquired as to whether the original notice was so different from the potential outcome following the hearing that the public would not have been alerted to the possibility of that outcome and, as such, would have opted not to attend the hearing and offer their views. Here, it cannot be seriously argued that the public was unaware that the potential outcome of the hearing process would be a transit fare increase and closing of token booths.

In *Gernatt v. Town of Sardinia*, 87 N.Y.2d 668, 642 N.Y.S.2d 14 (1996), the issue is presented was whether an amendment to the original proposal for a change to a zoning ordinance so strayed outside the boundaries of the proposal as described in the notice such that interested parties would have been induced into foregoing participation at the hearing. By contrast, in the instant matter, the final outcome corroborates meaningful public participation at

the hearing. Many of the suggestions made at the hearing -- providing for greater discounts and concern about fewer token booth closings, for example -- were part of the ultimate determination to add greater discounts and to eliminate many token booth closings. The court in *Garlen v. City of Glens Falls*, 17 A.D.2d 277, 234 N.Y.S.2d 564, (3rd Dep't 1962), *affd*, 12 N.Y2d 1025, 239 N.Y.S.2d 349 (1963), reviewed a notice published in connection with a proposed local law and was satisfied as to its sufficiency when it found that "sufficient clues" were provided as to the actual effect of the local law. It cannot reasonably be argued that the notices of fare hearings and associated budgetary measures, such as closing token booths, did not fully describe the potential measures that might be taken to address these issues. Finally, petitioner relies on *41 Kew Gardens Rd Assoc v. Tyburski*, 124 A.D.2d 553, 507 N.Y.S.2d 698 (2d Dep't 1986), *mot for lv den* 68 N.Y.2d 612, 510 N.Y.S.2d 1027 (1986), a case that examined the consequences of a notice of hearing containing the wrong hearing date, and, thus, its holding is patently irrelevant, as there is no allegation here that the notice was in any way inaccurate with respect to the times, dates or locations of the public hearings.

Petitioner's cases provide no support for its claim that the hearings were defective. To the contrary, MTA provided the public with necessary information to comment meaningfully on the gap-closing possibilities, includes the fare toll increases, and token booth closures.

CONCLUSION

For the reasons set forth above, and in defendants' accompanying affidavits, defendants respectfully request that Petitioner's request for injunctive relief be denied.

May 1, 2003

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