SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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In re the application of:
NEW YORK PUBLIC INTEREST RESEARCH GROUP/STRAPHANGERS CAMPAIGN, Inc., GENE RUSSIANOFF, COMMON CAUSE, INC., RACHEL LEON, TRI-STATE TRANSPORTATION CAMPAIGN, INC., JON ORCUTT, LOCAL 100 OF THE TRANSIT WORKERS UNION a/k/a TWU LOCAL 100, ROGER TOUSSAINT, et al., on their own behalf and on behalf of all straphangers and taxpayers in the City and State of New York similarly aggrieved,

Petitioners,

AFFIDAVIT OF RUSSIANOFF

For an order pursuant to Article 78 of the C.P.L.R.,

- against -

NEW YORK METROPOLITAN TRANSPORTATION AUTHORITY, PETER S. KALIKOW in his capacity of Chair/Commissioner of the Metropolitan Transportation Authority,

Index:.

Respondents.

--X

State of New York }
} ss:
County of New York }

GENE RUSSIANOFF, being duly sworn, deposes and says the following statement to be true:

1. I have been the staff attorney for the NYPIRG Straphangers Campaign since 1981. In that capacity, I watch the Metropolitan Transportation Authority's finances closely and lobby in Albany for resources for the New York City subway and bus system. From this vantage point, I became aware in 2004 that the MTA had significant

budget gaps in both its operating and capital programs.

2. On July 29, 2004, I attended a meeting of the MTA Board of Directors where they issued the "MTA 2005 Preliminary Budget," the ("Operating Budget"), as well as the "Proposed MTA Capital Plan 2005-2009," (the "Capital Plan"). Copies of the 2005 operating budget and the 2005-2009 MTA Capital Plan are attached as Exhibits 1 and 2 hereto.

3. In order to close the gaps in its Operating Budget, the MTA was forced to raise fares on Metrocards. It also established "Programs to Eliminate the Gap" ("PEGS") which cut service, maintenance and administrative expenses. PEGS included: reductions in car cleanings, bus schedules and maintenance of tracks; the elimination of token booth clerks and conductors; station booth closings and the reduction or elimination of service on bus lines. See Michael Luo, *Fare Increases on MetroCards Appear Likely,* N.Y. Times, July 29, 2004, at B8 (discussing the impact of the PEGS) attached as Exhibit 3 hereto.

4. The New York City Independent Budget Office issued a report dated November 2004, titled "Running on Empty: The MTA's 2005 Budget and Financial Plan." This report stated: "Even after proposals for fare and toll hikes and service reductions, the authority faces a shortfall of $695 million in 2006 (9 percent of revenues). This shortfall grows to $1.2 billion in 2008 (15 percent of revenues)." A copy of this report is attached as Exhibit 4 hereto.

5. While the deficit in the MTA operating budget was severe, the gap in its proposed 2005-2009 Capital Plan was staggering. The plan called for "core" capital programs including such critical items as buying subway cars, commuter coaches, buses,

and track signals, and repairs to stations, and other infrastructure that totaled $17.2 billion. This included $12.1 billion for New York City Transit, $2.4 billion for the Long Island Railroad, $1.4 billion for the Metro-North Railroad, $1.2 billion for MTA Bridges and Tunnels, and $495 million for security.

6. The MTA Capital Plan acknowledged that it had secured only $5.9 billion of the $17.2 billion needed to maintain its core programs. This included $4.5 billion from the federal government and another $1.4 billion from "potential asset sales" and "surplus funds from Prior Program." That left an astonishing $11.3 billion funding gap. The Capital Plan stated: "The MTA will work with its funding partners to develop proposals to fill the capital funding gap. Options for closing this gap include new debt, new dedicated revenue sources, or additional appropriations for our state and local governmental funding partners." (Capital Plan at 16, Ex. 2) The Capital Plan was submitted to the State Senate, State Assembly, and Governor's and Mayor's offices as required by state law.

7. In addition to its core maintenance program, the Capital Plan also included a $9.9 billion program to expand the transit system. Of this $9.9 billion, the MTA said it required state or local funding of at least $4.32 billion for the program, but did not identify the source of this funding.

8. Faced with these enormous gaps, MTA Chairman Peter Kalikow wrote on December 3, 2004 to New York State Department of Transportation Commissioner Joseph Boardman. After noting that the Capital Program had widespread support from many "civic and business organizations," he noted that the MTA faced "structural imbalances" over the last several years, saying "our riders, who pay a larger share of the

costs of operating this transit system than commuters in any other city in the nation, cannot and should not be asked to shoulder the additional burden of funding our next Capital Plan." A copy of the December 3, 2004 letter is attached as Exhibit 5 hereto.

9. In his December letter, the MTA Chairman proposed that the legislature fund the MTA by raising a series of taxes now dedicated to the MTA. These included the Corporate Franchise Tax, the Petroleum Business Tax, the Motor Fuel Taxes, the Motor Vehicle Fees, the Real Property Transfer Tax and the Mortgage Recording Tax. Collectively these taxes already raise hundreds of millions of dollars annually. It was a highly unusual request by an authority and received extensive media attention. See Charles V. Bagli and Michael Luo, *MTA Seeks Tax Increase Over 5 Years*, N.Y. Times, Dec. 4, 2004, at B5, attached as Exhibit 6 hereto.

10. On January 19, 2005, Governor George Pataki issued a proposed $105.5 billion budget for the State of New York. It included a total of $19.2 billion for both the MTA's core and expansion projects, some $8 billion short of the MTA's request.

11. In the wake of the Governor's budget proposal, the MTA and civic groups began an active campaign to force the Governor and the Legislature to provide additional funds to the MTA.

12. On March 8, 2005, I wrote the Governor along with several civic groups "to express our grave concerns about the impact that the proposed State budget will have on the transportation system that is the lifeblood of the state's economy. We wholeheartedly support the five-year capital plan that the MTA has proposed and recognize that both the core program and expansion projects are critical to the health of the system and the continued growth of the region's economy." We specifically noted

that "The $2 billion that has been cut from vital maintenance and normal replacement will compromise the safety, reliability and service of the system. The $6 billion shortfall for expansion projects will all but eliminate the possibility that Second Avenue Subway or East Side Access will be completed in our lifetimes." A copy of this letter is attached as Exhibit 7 hereto.

13. On March 31, 2005, the state legislature responded to the lobbying of the MTA and our coalition of civic groups, passing a budget that met virtually all of the Authority's needs for its core programs. The 2005-2006 budget enacted several new taxes and fees and dedicated them to the MTA. These totaled $315 million a year and included retention of 1/8 % of additional sales tax in the MTA region, an increase in the mortgage recording tax, and increased motor vehicle fees.

14. In addition to increased state aid and dedicated funds from fees and taxes, the MTA's Capital Plan required the Authority to close its budget gaps with the proceeds of the sale of MTA assets, including the development rights to the John D. Caemmerer West Side Yards (the "rail yards").

15. Ironically, on March 31, 2005, the same day that the Legislature voted to raise taxes and fees, and divert state funds from other critical programs in order to fund the MTA's Capital Plan, the Board of the MTA voted to sell the Authority's most significant asset for a fraction of its appraised value.

16. The MTA's own appraiser, Jerome Harris Realty, Inc., issued an appraisal of the rail yards in 2004 that valued the property at $923,400,000. Obviously, transit advocates are relying on the MTA's sale of this asset for as high a price as possible to help close the Authority's budget gaps and prevent a serious deterioration in transit

services.

17. The MTA's failure to obtain a bid remotely close to the appraised value of the rail yards, while disappointing, came as no surprise to those familiar with the situation. The MTA's method of soliciting bids was a severely truncated 27-day RFP process. It was impossible for developers to analyze and prepare proposals for the complicated project of building a platform over the rail yards, evaluate environmental and zoning issues, and obtain the necessary financing in such a time frame.

18. The only development proposals submitted in response to the RFP – neither of which comes close to the appraised value of the rail yards – were proffered by companies that had begun working on plans for the site before the RFP was issued. The RFP process appeared to have been designed to discourage open bidding and direct the development rights for the rail yards to Jets Development, LLC, the MTA's favored bidder. In this, it clearly succeeded. The proposed sale of a $923,400,000 asset by a New York State public authority for a present value of $210 million is a disgrace and a violation of the MTA's duty to act in the best interest of the people of the State of New York and of our public transit system.

19. The MTA's effort to sell the rail yards for a fraction of their actual value will create severe credibility problems for all of us who lobby in Albany for transit funding. In effect, we are now forced to go back to the Governor and Legislature and explain that, after we got them to raise taxes and direct funds from programs such as schools and healthcare to finance the MTA, the Authority entered into a deal that left $700 million "on the table."

20. I respectfully request that the Court reject the proposed sale and order the

MTA to initiate an RFP process designed to solicit rather than discourage bids, as they have on numerous other occasions, in order to receive the best possible price for the sale of the rail yards.

Gene Russianoff

GENE RUSSIANOFF

Sworn to before me this
15^{TH} day of April 2005

Thomas D. Shanahan
Notary Public

THOMAS D. SHANAHAN
Notary Public, State of New York
No. 02SH5083105
Qualified in Richmond County
Commission Expires August 4, 2006