

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

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11 January 2016

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Conrail - Abandonment Exemption - in Hudson
County, N.J., AB 167 (Sub-no. 1189X)
and related proceedings AB 55-686X
and AB 290-306X

LLCs' Motion to File a Reply to a Reply

Dear Ms. Brown:

By a motion dated December 21,¹ 212 Marin Boulevard LLC, et al (hereinafter the LLCs) seek to file a reply to a reply, contending the City of Jersey City (City) did not respond adequately to their earlier motion to compel concerning a shipper statement, which statement by this time is effectively moot. In or with their motion, the LLCs also purport to stuff the record with extraneous arguments and exhibits, including an unrelated transcript and their own bootleg version of the shipper statement over which they continue to fuss. As City explains below, permission to file the reply to a reply should and must be denied. The reply to reply and extraneous material should be removed from the record.

First, this Board's rules specifically prohibit the filing of replies to replies. 49 C.F.R. 1104.13(c). The LLCs' motion to reply to a reply is simply a ruse to stuff the record with more misleading or spurious arguments, including a redacted transcript of a closed City Council session that does not involve the shipper statement. The gravamen of the LLCs' reply to reply appears mainly intended to propagandize against the

¹ City did not receive a service copy until a week later.

City's prospective OFA, and to insinuate the City is delaying the proceeding. The City (with support from Conrail and CNJ) long ago sought such an OFA schedule (the shipper statement was to support a prompt schedule), but that request was denied by this Board, which has deferred issuing a schedule. Rather than taking illegitimate potshots at the City in an equally illegitimate reply to a reply, the LLCs should wait for an OFA schedule for the remainder of the proceeding like the rest of us. They, not us, are the cause of years of delay and their latest reply to a reply, if it causes anything, is simply causing delay.

Second, the entire reply to a reply as directed at the City is absolutely spurious, predicated on the notion that the City is obligated to do redactions. This Board clarified in its decision served November 10, 2015, that CNJ, which originally designated the shipper statement for protection under this Board's protective order, is responsible for any redactions, not the City.

It is also noteworthy that the railroad (Conrail) has never objected to confidential treatment of the entire shipper statement, or to CNJ's proposed redactions. Indeed, no party to this proceeding has complained about the shipper statement's status under the protective order except the LLCs. How the redactions harm the LLCs or anyone else is an unexplained mystery. The LLCs are hardly in this proceeding to vindicate any public interest in shipper statements; the LLCs are the business arms of a litigious land developer bent per recent filings with STB's Office of Environmental Analysis) on demolition of the section 106-protected Harsimus Embankment and conversion of the rail line into no less than 200 housing units per acre. This scheme to convert a line of railroad into skyscrapers, of course, is all part and parcel of an illegal de facto abandonment scheme from which the developer has sought to maximize its profits at public expense since its inception over a decade ago. The developer has threatened to burden and (in the developer's words) to bankrupt any party (or individual) who seeks to thwart his destruction of the Embankment, and has in fact filed multiple suits consistent with his threats. The LLCs' fuss over the shipper statement is part and parcel of the burdensome pattern of distraction and obfuscation and avoidance of substance that so typify his tactics.

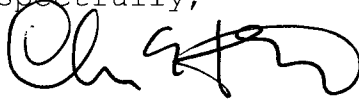
Third, apparently as part of the illegitimate reply to a reply, the City received a letter from the LLCs' counsel to STB dated December 22, 2015, purporting to tender for filing under seal the LLCs' edit of the shipper statement. There is no evidence that the LLCs consulted CNJ or the shipper in preparing their version of the shipper statement. For a developer to edit a shipper statement is unprecedented and potentially highly confusing, misleading, inaccurate and abusive. The LLCs tendered their bootleg version of the statement as part of their reply to a reply (see p. 9 of the reply to reply). It should be removed from the record pursuant to 49 C.F.R. 1104.13(c) along with the rest of the reply.

Fourth, the City reiterates that it supports maintaining the identity of the shipper as confidential in order to afford shippers with some protection against spurious litigation by the LLCs, which litigation would also serve to discourage other shippers from coming forward.

In conclusion, the LLCs' motion to file a reply to a reply should be denied, and the material tendered by the LLCs formally removed from the record. If the LLCs wish to contest CNJ's proposed redactions, then they should do so with a second motion to compel, focus on the redactions, and delete all of the extraneous material they attached to their reply to a reply.

If this Board allows the LLCs to file their reply to a reply with all of its spurious insinuations and attachments, then City et al request this Board to provide them with twenty days' additional notice to respond.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ch Montange', with a stylized flourish at the end.

Charles H. Montange
for City of Jersey City, Rails to Trails
Conservancy and PRR Harsimus Stem Embankment
Preservation Coalition

cc. Parties per certificate of service

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, this ___th day of January 2016 addressed to the following Service List (courtesy email attachment copies were also provided to Messrs. Jenkins, Horgan, Strohmeier and Riffin) and Supplemental Service List.

Service List (current as of December 2015)

Daniel Horgan,
Waters, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096 (LLCs)

Robert M. Jenkins III
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101 (Conrail)

Daniel D. Saunders
State Historic Preservation Office
Mail Code 501-04B
NJ Dept. Environmental Protection
P.O. Box 420
Trenton, NJ 08625-0420

Massiel Ferrara, PP, AICP, Director
Hudson County Division of Planning
Bldg 1, Floor 2
Meadowview Complex
595 County Avenue
Secaucus, NJ 07094

Joseph A. Simonetta, CAE,
Executive Director
Preservation New Jersey
414 River View Plaza
Trenton, NJ 08611

Justin Frohwith, President
Jersey City Landmarks Conservancy
54 Duncan Avenue
Jersey City, NJ 07303

Jeremy Jacobson, President
Harsimus Cove Association
20 Erie Street, Apt. #2
Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

President
Van Vorst Park Association
91 Bright Street
Jersey City, NJ 07302

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

Dennis Markatos-Soriano
Exec. Director
East Coast Greenway Alliance
5315 Highgate Drive, Suite 105
Durham, NC 27713

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin, President
Friends of Liberty State Park
580 Jersey Ave., Apt. 3L
Jersey City, NJ 07302

Aaron Morrill
Civic JC
64 Wayne St.
Jersey City, NJ 07302

Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069

James Riffin
PO Box 4044
Timonium, MD 21094

Supplemental Service List

Per a prior request of the Board, service is also made on the following addressees, although none is believed to continue to represent a party in the proceeding and/or is otherwise superceded.

Stephen Marks
Hudson County
583 Newark Avenue
Jersey City, NJ 07306

Gretchen Scheiman
Historic Paulus Hook Association
121 Grand Street
Jersey City, NJ 07302

Michael Selender
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Brian P. Stack
411 Palisade Avenue
Jersey City, MJ 07307

Dan Weber
Van Vorst Park Association
2989 Varick Street
Jersey City, NJ 07302