

**BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.**

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ENTERED
Office of Proceedings
March 3, 2015
Part of
Public Record

Reply To City Motion To Strike

**By Intervenors:
212 Marin Boulevard, LLC
247 Manila Avenue, LLC
280 Erie Street, LLC
317 Jersey Avenue, LLC
354 Cole Street, LLC
389 Monmouth Street, LLC
415 Brunswick Street, LLC
446 Newark Avenue, LLC
Limited liability companies of New Jersey.**

**In
Conrail Petition For Exempt Abandonment
Hudson County, New Jersey
STB Docket: AB-167-1189-X
And Related Proceedings
AB-55-686-X
AB-290-306-X**

Daniel E. Horgan, DC BAR # 239772
WATERS, McPHERSON, McNEILL, P. C.
300 Lighting Way
Secaucus, NJ 07096
Telephone: 201-330-7453
Fax: 201-863-7153
Counsel for Intervenors

DATED: March 3, 2015

The LLC Intervenor file this Reply to the City's Motion to Strike, which motion was filed on March 2, 2015. The City is seeking to strike LLC Intervenor's prior reply to a prior motion filed by the City. The City has no grounds to complain, as replies to motions are entirely proper under the Board's regulations. 49 CFR §1104.13(a).

The City is again mischaracterizing both the substantive and procedural circumstances relevant to the matter at hand. Procedurally, the pleading that the City seeks to strike is a reply to a motion filed by the City, which the City now mischaracterizes as a reply to a reply and cites to 49 CFR 1114.13(c).¹

Substantively, the City is responding to an entirely proper and appropriate reply by LLC Intervenor to the City's second attempt to mislead the Board with incorrect, improper, and evasive submissions concerning its purported OFA. The LLC Intervenor's reply speaks for itself and we will not repeat those arguments here. The City is attempting to create a record in which its representations to the Board can go unchallenged. That effort must be rejected in the interest of fairness and procedural due process in these proceedings. Characteristically, the City's present motion continues with the same sort of net conclusory statements that characterize virtually all of its submissions to the Board.² By way of example only, at page 3 of its motion the City provides this comment on LLC Intervenor's state court

¹ This citation is obviously a typographical error as there is no §1114.13 and the intended citation should be §1104.13, subsection (c) of which deals with replies to replies.

² It also becomes fairly evident from the sections marked "Background" and "LLCs' Latest Reply" that what the City is doing is attempting to reply to a reply; the same thing it incorrectly accuses the LLC Intervenor of doing.

challenge to the City's OFA ordinance: "All else that the LLCs have to say concerning 247 Manila is misleading or immaterial, as is the suit itself."

The City's Motion to Strike should be denied because it improperly seeks to truncate the record in this matter, and avoid legitimate criticism of its conduct before the Board. Fairness and procedural due process require a level playing field in which all parties are given an equal opportunity to make their case and criticize opposing parties.

Respectfully submitted,

s/ Daniel E. Horgan

Daniel E. Horgan, DC BAR #239772

Waters, McPherson, McNeill, P.C.

300 Lighting Way

Secaucus, NJ 07094

Phone: 201-330-7453

Counsel for Intervenors

DATED: March 3, 2015

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby certify that I caused a copy of the foregoing to be served by First Class mail upon those on the attached Service List by depositing same with the U.S. Postal Service on March 3, 2015.

s/Daniel E. Horgan

Daniel E. Horgan, DC Bar #239772

Waters, McPherson, McNeill, P.C.

300 Lighting Way

Secaucus, NJ 07094

Phone: 201-330-7453

Counsel for Intervenors

Dated: March 3, 2015

SERVICE LIST

Counsel for Jersey City, Coalition, RTC:
Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177

Counsel for Rails to Trails Conservancy (RTC)
Andrea Ferster, Esq.
General Counsel
2121 Ward Court NW, 5th floor
Washington, D.C. 20037

Counsel for Conrail:
Robert M. Jenkins, III, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101

Former Counsel for LLCs
Fritz Kahn, Esq.
1919 M Street, NW
7th Floor
Washington, D.C. 20036

And the following self-represented individuals or entities:

Robert Martin
Daniel D. Saunders
NJ Department of Environmental Protection
State Historic Preservation Office
P.O. Box 420
Trenton, NJ 08625-0420

Massiel Ferrara, Director
Hudson County Planning Division
595 County Avenue
Bldg. 1, Second Floor
Secaucus, NJ 07094

Ron Emrich - **UNKNOWN**
Executive Director
Preservation New Jersey
310 W. State Street
Trenton, NJ 08618

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

Eric Fleming
President
Harsimus Cove Association
344 Gove Street
P.O. Box 101
Jersey City, NJ 07302

Jennifer Greely – **UNABLE TO FORWARD**
President
Hamilton Park Neighborhood Assoc.
22 West Hamilton Place
Jersey City, NJ 07302

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

Robert Crown
Vice President of Communications
The Village Neighborhood Association
365 Second Street
Jersey City, NJ 07302

Dan Webber
Vice President
Van Vorst Park Association
289 Varick Street
Jersey City, NJ 07302

Gretchen Scheiman
President
Historic Paulus Hook Ass'n
121 Grand Street
Jersey City, NJ 07302

Robert Vivien
President
Newport Nbd Ass'n
ADDRESS UNKNOWN

Delores P. Newman
NJ Committee for the East
Coast Greenway
ADDRESS UNKNOWN

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 Avenue, Apt. 3L
Jersey City, NJ 07302

Daniel H. Frohwirth
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303

Valerio Luccio
Civic JC
ADDRESS UNKNOWN

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

Counsel for CNJ Rail Corp
Thomas McFarland, Esq.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604

Maureen Crowley
Embankment Preservation Coalition
263 Fifth Street
Jersey City, NJ 07302

Karen Votava - **UNDELIVERABLE**
East Greenway Alliance
27 North Road
Wakefield, RI 02879

Non-Parties of Record – Provide copies of Pleadings only

Kenneth Koschek - **UNDELIVERABLE**
New Jersey Department of Environment Protection
P.O. Box 418
Trenton, NJ 08625-0418

New Jersey Department of Environmental Protection - **UNDELIVERABLE**
P.O. Box 402
Trenton, NJ 08625

New Jersey Department of Environmental Protection - **UNDELIVERABLE**
Bureau of Coastal and Land Use
P.O. Box 422
Trenton, NJ 08625

New Jersey Historic Preservation Office
P.O. Box 404
Trenton, NJ 08625-0404

U.S. Fish and Wildlife Service
927 N. Main Street
Building D
Pleasantville, NJ 08232-1451