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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34824

**TRI-STATE BRICK AND STONE OF NEW YORK, INC. AND TRI-STATE
TRANSPORTATION INC. – PETITION FOR DECLARATORY ORDER**



**REPLY OF
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
ON BEHALF OF THE CITY OF NEW YORK, NY
TO COMMENTS OF HON. JERROLD NADLER**

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Dated: December 13, 2006

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ON BEHALF OF THE CITY OF NEW YORK, NY
TO COMMENTS OF HON. JERROLD NADLER**

The New York City Economic Development Corporation (“EDC”) and the City of New York, NY (the “City”) hereby file Reply to the Comments of the Hon. Jerrold Nadler, filed in this proceeding on December 1, 2006¹ (“*Nadler Comments*”). Congressman Nadler’s Comments include a number of statements for which there is an insufficient evidentiary basis in the record before the Board. In the interest of ensuring that the Board renders a decision on the Petition to Reopen based on an evidentiary record that has been submitted and supported by the testimony of persons with knowledge of the facts, EDC and the City submit this reply to identify such testimony in order that the Board may ascribe appropriate weight to that information.

Specifically, Congressman Nadler makes the following representations:

¹ Although Congressman Nadler styles the pleading filed on December 1, 2006 as “Comments,” it is in fact a Reply to the Petition to Reopen. The Board’s rules do not permit the submission of a reply to a reply. 49 C.F.R. §1104.13(c). EDC and the City are filing concurrently with this Reply a Petition for Leave to File a Reply, and are tendering this Reply in anticipation of a favorable ruling on that Petition.

1. "Rail use of land is among the lowest paying uses known. The imposition of commercial level rents, therefore, prevents access to rail services...." *Nadler Comments* at 2. The Congressman provides no factual basis for this assertion and provides no justification for the Board to accept this otherwise unsubstantiated statement as fact.
2. The allegations on page 5 that the terms of the agreement between Canadian Pacific and the City "drove the Canadian Pacific Railroad from the property" similarly have no foundation. CP has never testified in this or any other proceeding that the actions of the City or any of its agencies "drove...[it] from the property" nor has CP ever expressed this view to the City, EDC or any of its representatives.
3. EDC's actions prevent the rail carrier currently serving the yard from providing service to it and constitute a constructive abandonment of the 65th Street Yard (*Nadler Comments* at 11). The sworn testimony of the railroad and of the City in this proceeding and in the related proceedings in federal court have confirmed that the City is not interfering with the provision of rail service to the facility, has taken no steps that could be described as preventing the railroad from operating in the yard, and has expressed no plans to abandon. The inferences Congressman Nadler attempts to draw are not supported by any testimony from persons with knowledge of the facts, and are in fact directly contradicted by testimony from persons with such knowledge.

Congressman Nadler, like Petitioners in this proceeding, continues to ask this Board to step outside the realm of the jurisdiction conferred upon it by Congress. All that the City wants to accomplish, as its officials have testified here, is to require Petitioners, who are unlawful squatters at this rail yard, to pay a commercially reasonable rent or to leave the site. The City has made no secret of its plans (and has testified to this effect both here and in related court

proceedings) to increase, not decrease, rail activity at the 65th Street Yard. EDC plans to issue an RFP for a rail operator that will operate the facility and for other users of the property who will use it for purposes consistent with continued rail operation. EDC has consistently provided testimony, by officials with knowledge of the facts and policies, that its objective is to ensure the continued provision of rail service at the 65th Street Yard. Petitioners' and now Congressman Nadler's attempts to cloud the record with unsubstantiated statements and unsupported inferences should not be viewed by this Board as a credible means to discredit the sworn testimony of EDC officials and of the New York and Atlantic Railway.

WHEREFORE, and in view of all of the foregoing, and of all of the other facts and arguments submitted in this proceeding, the City and EDC respectfully request that this Board deny the Petition to Reopen.

Dated: December 13, 2006

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2006, a copy of the foregoing Reply of the New York City Economic Development Corporation on behalf of the City of New York, NY to Comments of Hon. Jerrold Nadler was served by first class mail, postage prepaid, upon the following:

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