

**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**

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DATED: March 3, 2015

The LLC Intervenors 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 Intervenors' 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 Intervenors to the City's second attempt to mislead the Board with incorrect, improper, and evasive submissions concerning its purported OFA. The LLC Intervenors' 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 Intervenors' 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 Intervenors 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
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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

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