

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

239509
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REPLY TO CITY'S REQUEST FOR CLARIFICATION

**IN RE: Motion for Determination that Documents
Filed with Board as "Confidential" and
"Highly Confidential" Should be Unsealed**

ENTERED
Office of Proceedings
November 6, 2015
Part of
Public Record

**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: November 6, 2015

REPLY TO CITY'S REQUEST FOR CLARIFICATION

The eight LLC intervenors (“Intervenors”)¹ hereby reply as follows to the “Request for Clarification” that the City of Jersey City, Rails to Trails Conservancy, and PRR Harsimus Stem Embankment Preservation Coalition (“City”) filed on November 3, 2015 (“November 3 Request”), regarding the order that the Surface Transportation Board (“Board”) served in the above-captioned proceeding on November 2, 2015 (“November 2 Order”). The City represents that CNJ Railroad (“CNJ”) supports its request.

1. The November 2 Order, inter alia, grants Intervenors’ motion to un-designate as “highly confidential” the statement by the putative shipper, and requires the City to file a version with “confidential” information redacted by November 12, 2015. The November 2, 2015 Order defines what information may be treated as confidential, and therefore subject to redaction. However, by requiring the redacted version to be filed, the Board has required that the public have access to the non-confidential portions of the statement. Particularly inasmuch as City’s November 3 Request did not request a stay, City remains bound to comply with the November 2 Order.

2. City, with CNJ’s support, contends that CNJ should be responsible for the resubmission because CNJ “originally produced the statement,” “originally designated it as highly confidential,” and “is in a superior position to ascertain what information continues to merit confidential treatment.” November 3 Request at 1-2. Intervenors care

¹ The Intervenors are 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, and 446 Newark Avenue, LLC.

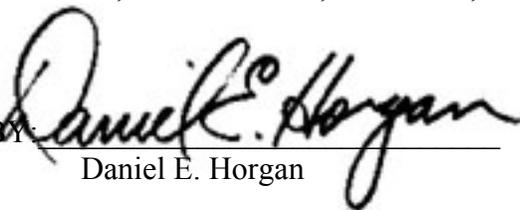
little which entity (City or CNJ) redacts and submits the redesignated documents, so long as it is done timely and properly.

3. City's alternative suggestion that Intervenors prepare the redaction, or be responsible for inadvertent disclosure, id. at 2, is nonsense. City submitted the statement to the Board for the purpose of persuading the Board. City's attorney is a long-time practitioner, familiar with the Board's requirements and expectations. As between City and the Intervenors, City bears the burden of any inappropriate designation or submission. Intervenors cannot reasonably be held responsible for any improper designations of a document they did not procure or file initially under seal with the Board.

4. Redaction and resubmission should be a quick and simple matter. If the document cannot be timely redacted and resubmitted, it should be struck from the record of the proceeding, along with any attempted reliance on it. In particular, City, which submitted the statement on December 23, 2014, for the purpose of persuading the Board, should not be allowed to continue to rely upon it if it is not timely and properly resubmitted.

Respectfully submitted,

WATERS, McPHERSON, McNEILL, P.C.

BY: 
Daniel E. Horgan

Dated: November 6, 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 November 6, 2015.

A handwritten signature in black ink that reads "Daniel E. Horgan". The signature is written in a cursive style with a large initial "D".

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Dated: November 6, 2015

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

Supplemental Certification of Service

By Intervenors:

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280 Erie Street, LLC

317 Jersey Avenue, LLC

354 Cole Street, LLC

389 Monmouth Street, LLC

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NZ Funding, LLC

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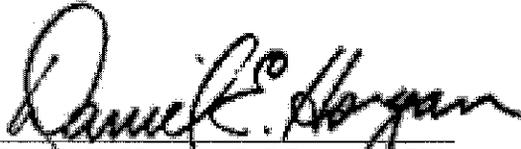
SUPPLEMENTAL CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby update the Certificate of Service filed with the Intervenor's response to City's request for clarification of the Board's November 2, 2015 decision as follows. I certify that I caused a copy of the foregoing to be served by First Class mail upon the following by depositing same with the U.S. Postal Service on November 6, 2015.

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