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ENTERED
Office of Proceedings
November 17, 2015
Part of
Public Record

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November 17, 2015

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
395 E Street, SW, Room #100
Washington, D.C. 20423

**RE: STB Docket No. 167-1189-X and Related Dockets;
Non-Compliance with Board Order**

Dear Ms. Brown:

In a decision dated October 29, 2015, and served on November 2, 2015, the Board granted, in part, the Intervenor LLCs' motion to unseal a shipper's statement that was filed by the City of Jersey City in these proceedings. The Board determined that the shipper's statement did not qualify as a "highly confidential" document. The Board reasoned that some information in the statement, however, qualified as confidential. The Board ordered the City to file a public version of the shipper's statement with confidential information redacted, and an unredacted, confidential version. The Board ordered that the City comply by November 12, 2015.

On November 3, 2015, the City requested clarification of the Board's decision. The City claimed it had not procured the shipper's statement, and that CNJ Rail Corp. has, in fact, obtained the statement from the shipper. The City, in substance, did not want to take responsibility for redacting the shipper's statement, notwithstanding the fact it was the City that

filed the statement under seal with the Board. The City represented that CNJ Rail joined in that request.

The City's request was granted on November 9, 2015. The Director of Proceedings has now required CNJ Rail to file the confidential, unredacted version, and the public versions of the shipper's statement. The deadline was unchanged, and thus the filing was due on November 12, 2015.

As of the filing of this letter, neither the City nor CNJ Rail have filed the unredacted, confidential version or the public version of the statement. Accordingly, CNJ Rail is now in violation of the November 9, 2015 order. For its part, the City is also in violation. The City was first ordered to produce the statement in the November 2, 2015 decision, and the City requested an alteration based upon a representation that CNJ Rail concurred with the request. By requesting clarification, and relief from the Board's decision, the City should be held accountable for lack of compliance of the very decision the City sought.

We hereby request that appropriate action be taken to address the City's and CNJ Rail's failure to comply with the Board's directives, as clarified by the Director. A firm deadline was set, and no reason has or could be offered for not adhering to the orders. Appropriate action could include simply ordering that due to the failure to comply, the City and CNJ Rail shall be required to file a public, unredacted version of the shipper's statement. The City or CNJ Rail could avoid that result by immediately complying with the relief granted by the Board, which should be an easy exercise given the Board's guidance on what type of information could be redacted from the public version.

Having prevailed in their motion that the shipper's statement is not a "highly confidential" document, and partially prevailing that any "confidential" material should be

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Cynthia T. Brown, Chief

November 17, 2015

Page 3

publicly available, the Intervenor LLCs are entitled to have the statement filed in accordance with the orders. Therefore, we respectfully request, on behalf of the Intervenor LLCs, that appropriate action be taken to ensure compliance with the Board's orders.

Very truly yours,

WATERS, MCPHERSON, MCNEILL, P.C.

By:

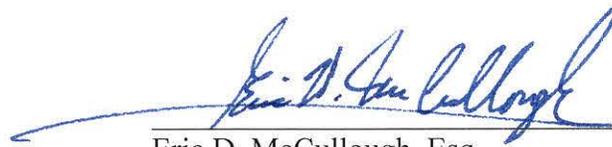


Eric D. McCullough

cc: Service List

CERTIFICATE OF SERVICE

I, Eric D. McCullough, 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 17, 2015.



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November 17, 2015

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November 17, 2015

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