BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.

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Docket Number FD-35825

Petition for Declaratory Order of Exemption
Pursuant to 5 U.S.C.A. § 554, 49 C.F.R. § 1117.1, and
49 U.S.C.A. § 10502

PETITIONERS:

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
NZ Funding, LLC
Limited liability companies of New Jersey.

MOTION FOR RECONSIDERATION

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Surface Transportation Board

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Limited liability companies of the State of New Jersey,

As PETITIONERS:

MOTION FOR RECONSIDERATION

Petitioners 212 Marin Boulevard LLC, 247 Manila Avenue LLC, 280 Erie Street LLC, 317 Jersey Avenue LLC, 354 Coles Street LLC , 389 Monmouth Street, LLC, 415 Brunswick Street LLC, 446 Newark Avenue LLC and NZ Funding LLC (hereinafter collectively referred to as "LLCs" or "Petitioners"), pursuant to 49 C.F.R. 1115.3(a), hereby petition the Board for reconsideration of its August 8, 2014 decision (served August 11, 2014; hereafter "Decision") in the above-captioned matter. The Petitioners incorporate their May 8, 2014 Petition for Declaratory Order of Exemption Pursuant to 5 U.S.C. 554, 49 C.F.R. 1117.1 and 49 U.S.C. 10502, and the exhibits thereto, as if fully set out herein, ("Petition") including the Authority and Statement of Claim set out therein.

The Board should reconsider its Decision in this matter in order to avoid a fundamental error of law as to the duration and extent of its jurisdiction and to address material factual errors and omissions.

(a) The Question of the STB's Jurisdiction is a Primary Question Which Must be Answered Prior to any other Proceedings.

The creation, operation, and termination of railroads as an element of interstate commerce are properly regulated under the Commerce Clause. Preemption of state regulation in those areas is also proper, and the LLCs do not challenge those fundamental concepts. Certainly the Board can exercise its authority when there is a present or future need for rail freight service in a particular circumstance. In their petition to the Board, the LLCs have shown that there is no present or future need for rail service on their properties, and that fact has not only been unchallenged, but is manifest by virtually every fact established in this and related proceedings before the Board.

What the Board has done is to base its jurisdiction, and exercise of that jurisdiction, solely on the historical fact that the property was once a railroad line in 1976, while ignoring the reality that any possibility of rail freight service ended decades ago and cannot be resumed. The Commerce Clause does not support jurisdiction when there is no commerce. Without interstate commerce there can be no Commerce Clause jurisdiction to be exercised by the Board. The Board is without present jurisdiction and therefore, it cannot conduct proceedings to abandon and impose conditions on properties over which it has no interstate commerce jurisdiction. See Kitchen v. Federal Communications Commission, 464 F.2d 801 (D.C. Cir. 1972)

The present matter is not about rail freight service, but is simply a local real estate dispute that happens to involve a railroad and property that a railroad sold to the LLCs many years ago.

This dispute was first presented to the Board in 2006 under STB Finance Docket No. 34818. [1] Since then, a period of some eight years, the property has remained vacant and idle. Tracks, bridges and other railroad facilities were removed long ago and ever since there has been no rail freight service, nor any promise of future service.[2] All that has happened is that the Board has remained embroiled in local real estate disputes because it has not clearly identified the limits of its Commerce Clause jurisdiction. Yet the Board has chosen to proceed to fully exercise that jurisdiction in related matters in which the Petitioners are parties and must participate to protect their property interests.[3] Those proceedings have nothing whatsoever to do with rail service. They involve only a continuation of the local real estate dispute between the City of Jersey City (the "City"), private interests groups, Conrail, and Petitioners. The City is seeking the Board's help in acquiring the property without paying just compensation to the Petitioners through any means available, including an abusive use of the Board's procedures for Offers of Financial Assistance. Despite substantial efforts by Petitioners, the City's sham OFA

[1] The Board's determination in that matter was subsequently vacated as the Court of Appeals determined the Board was without jurisdiction.
[2] Demolition of rail facilities began twenty years ago in 1994 (Petition Ex. K through M).
[3] Consolidated Rail Corporation – Abandonment Exemption – In Hudson County, NJ, STB Docket: AB-167(1189-X) and two related proceedings by CSX Transportation, Inc. and Norfolk Southern Railway Company. STB Dockets: AB 55(686-X) and AB 290(306X), respectively.

remains under consideration.[4] Conrail, seeking Board absolution for alleged past violations of law and STB regulations, has refused to take any substantive position on virtually any issue, leaving Petitioners embroiled in proceedings before the Board having nothing to do with interstate rail freight service.

The STB's jurisdictional limits should not be hard to discern. For example, where the Board has acknowledged through its abandonment procedures that no further need for rail freight exists, jurisdiction is at an end. See Consolidated Rail Corp. v. Surface Transportation Board, 93 F.3d 793 (D.C. Cir. 1996)(noting that the United States Supreme Court has recognized that once a carrier abandons a line pursuant to authority granted by the Commission, the line is no longer part of the national transportation system and Commission jurisdiction generally terminates.) This applies not only to formal abandonments, but to the properties that are abandoned *de facto* because they are no longer involved in interstate commerce, as they are no longer connected to the national transportation rail system. RLTD Railway Corp. v. STB, 166 F.3d 808 (6th Cir. 1999). Thereafter, the Board has no authority and no interests in that which it formerly regulated. For example, the Board may no longer apply its regulations concerning abandonment conditions, disposition of the property for public use, or the imposition rail/trail conditions after jurisdiction has ceased. Conrail, supra 93 F.3d 793 (D.C. Cir. 1996)(STB was without jurisdiction to reopen abandonment proceedings after consummation of abandonment by the railroad for the purpose of imposing conditions); See also Becker v. Surface Transportation Board, 132 F.3d 328 (D.C. Cir. 1997).

[4] Board Decision, STB Docket: AB-167(1189-X) (Served August 11, 2014), p. 7, footnote 21 concluding: "We will address those filings and outstanding issues regarding OFAs in a separate decision."

The Board has ignored those limitations in dismissing the LLCs' Petition brought under the Administrative Procedure Act, 5 U.S.C. 554. All that was asked in that Petition was for the Board to declare that it had no jurisdiction because there was no commerce. The Board refused without making a finding that it did, in fact, have such jurisdiction and the Petitioner LLCs are entitled to such a finding if their Petition is to be dismissed. In order for the Board to find that it has jurisdiction there must be interstate commerce. It cannot claim jurisdiction, and subject owners of properties formerly used for railroad purposes to its process and procedures, including the potential imposition of abandonment conditions, on the mere basis that its regulations require it to do so. During the eight years of Board involvement in this real estate dispute before the LLCs filed their Petition, there was absolutely nothing upon which the Board could base a claim to jurisdiction over the LLCs' properties. Yet in this jurisdictional vacuum the Board assumes that it must have jurisdiction over any land that ever carried an interstate freight line because it has not yet determined that its jurisdiction has expired. Petitioners know of no federal agency claiming such pervasive jurisdiction.

Petitioners do not deny that the agency must ask the jurisdictional question, and that is exactly what they asked the Board to do in their petition. When the Board refuses to address the question, everything that it does thereafter with respect to the LLCs' property and interests proceeds without any jurisdictional foundation. The Board must establish a presently existing jurisdictional foundation before proceeding to impose conditions on the LLCs' properties; such jurisdiction can only be established on the basis of an existing connection with interstate commerce and not merely on the basis of STB regulations. See e.g. Kitchen, supra, 464 F.2d 801 (FCC without authority to impose NEPA conditions on

a transaction that falls outside of its jurisdiction, and could not rely on NEPA as a basis of jurisdiction as NEPA is not a jurisdiction granting statute).

(b) The Issue of the Board's Present Jurisdiction has Not Been Litigated Much Less Established and was Specifically Preserved by the District Court and Court of Appeals.

The additional reasoning given by the Board for its decision - the Board's claim that the matter of its jurisdiction, as raised by the Petitioners, has been litigated by the LLCs and settled by the courts is also erroneous. (Decision p.4 n.15). The US District Court, sitting as the Special Court, decided two things. It decided that 38 years ago, in 1976, Conrail received the properties it later sold to the LLCs as a line of rail subject to the Board's regulatory jurisdiction. The court also decided that it would not permit the parties to concurrently litigate counterclaims proposed by the LLCs alleging that the property was no longer subject to the Board's regulation because there was no longer any present or future possibility of connection of the properties to the needs of interstate commerce. However, these claims were specifically preserved for later resolution. (Exhibit A1 to Petition, Decision pp. 4 & 8). The issues raised in the Petition were simply not litigated, much less resolved. They were, rather, expressly preserved. The US Court of Appeals affirmed this preservation of those claims. (Exhibit A2 to Petition). The LLCs, as Petitioners, brought those claims to the Board in its Petition, and the Board dismissed the Petition on the completely erroneous and unfounded assertion that they had been resolved in court.

The Board also ignores the terms of the stipulation upon which the decision of the DC District Court was based. The parties merely stipulated that the Harsimus Branch between Marin Boulevard and CP Waldo was transferred to Conrail in 1976 as a

regulated line of rail. The parties did not, however, stipulate that the Harsimus Branch in 2005, when transferred to the LLCs, was then (or is still) a regulated line of rail. Indeed, the LLCs argued to the DC District Court that the Harsimus Branch was not a line of rail in 2005 because, in part it was severed from the national rail network in 2002 by the River Line abandonment, and that as such, it should be allowed to file a counterclaim on this point. Rather than rejecting this argument, the Special Court granting summary judgment quite clearly held that the issue of whether the line was still regulated was preserved and that the LLCs could raise that issue in the appropriate time and forum, which the LLCs did by way of their Declaratory Order Petition to the Board.

(c) The Board's Consideration of the Effect of the River Line Abandonment Ignores the Record Established by the Petitioner, the District Court's Determination and Contradicts the Board's Own Prior Descriptions of CP Waldo and the Lines at Issue

Also in error is the Board's consideration and analysis of Conrail's 2002 abandonment of the River Line. (In re Conrail Abandonment of the River Line in Hudson County, NJ STB Docket No. AB-167 (Sub-No. 1067N)). Consistent with their position that there is no relationship to interstate commerce because there is no present or future need for rail freight service, the LLCs argued that the abandonment of the River Line confirmed that the redevelopment of the Jersey City waterfront for residential and business commercial purposes had displaced all rail freight uses, and had also acted to sever the Harsimus Branch from the National Rail Network. That confirmation serves as cumulative evidence in support of the LLCs' petition, and there is no evidence to the contrary in this or any other record before the Board.

However, the Board has attempted to maintain the possibility of such a connection by suggesting that the River Line and the Harsimus Branch separately

connected to the national transportation network at CP Waldo. This contradicts the Board's prior determinations and the record.

The Decision concluded that:

> The LLCS also allege that, in 2002 the Harsimus Branch was severed from the national transportation system, due to Conrail's abandonment of a nearby line, known as the River Line, constituting a de facto abandonment. Specifically, the LLCs claim that the connection between the River Line and Harsimus Branch was not at Controller Point Waldo but at a point 750 feet away which would mean that single track connected the River line and the Harsimus Branch to CP Waldo. The LLCs argue that the abandonment of the River Line included this 750 foot stretch of track thus severing the Harsimus Branch from the national rail system. However, the Board's decision regarding the River Line expressly authorized abandonment of a segment connecting to the Harsimus Branch "at Controller Point (CP) 'Waldo.'" Thus the Board's abandonment authorization for the River Line did not include trackage that would sever the Harsimsu Branch from the national transportation system. [Decision p. 4.]

In so holding, the STB not only misconstrued the LLCs argument, but also ignored the facts presented that establish a *de facto* abandonment of the Harsimus Branch. RLTD Railway Corp. v. STB, 166 F.3d 808 (6th Cir. 1999).

As argued by the LLCs, and as established by the Petition, by Conrail's filings in the River Line abandonment, and by the 2006 Action brought by Jersey City,[5] and the STB's own pronouncements in this eight-year saga, Conrail has at all times relevant considered CP Waldo to be the point of connection of both the River Line and the Harsimus Branch to the national rail network. Conrail also identified this same point, CP Waldo, as also being Milepost 0.0. of the Passaic and Harsimus Branch, (See in re City of Jersey City et al., STB Finance Docket No. 34818 Decision of August 8, 2007 p.6). which no one disputes is still part of the National Rail Network.

[5] STB Docket: FD34818

Conrail's petition for the Exempt Abandonment of the Harsimus Branch describes the Harsimus Branch as "Rail right-of-way running from CP Waldo (Milepost 0.00) in the City of Jersey City to a point east of Washington Street (Milepost 1.36)" (STB filing 224298, AB 167-1189-X, Notice of Exemption, filed Jan 7, 2009). Conrail's Abandonment of the River Line described the to-be-abandoned segment of the River Line as running "...from the connection to the Passaic and Harsimus Branch at Controller Point (CP) Waldo in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken..." (In re Conrail Abandonment of the River Line Decision AB-167 (Sub-No. 1067N) Decided January 17 2002 p. 1 n.3).

The STB, until its August 8, 2014 Decision, was also in agreement with these facts.

As recognized by the Board in its August 8, 2007 Decision in STB FD 34818, by 1982, Conrail considered CP Waldo as being Milepost 0.0. of the Passaic and Harsimus Branch which ran west through Kearny and considered the Harsimus Branch as being a separate line. As described by the Board in 2007, in a 1982 track chart Conrail listed the Passaic and Harsimus Branch as beginning, not at a point east of CP Waldo, but at CP Waldo. (STB Docket No. 34818 Decision of August 8, 2007 p. 6). As further recognized by the Board, by 1982, Conrail did not consider the Harsimus Branch lying to the east of CP Waldo as being a part of what it termed to be the "Passaic and Harsimus Branch", (previously known as the United New Jersey Railroad and Canal Company main line "UNJRCC"), but that CP Waldo, was milepost 0.00 of the Passaic and Harsimus Branch as reckoned by Conrail. Ibid. In other words, by the time Conrail applied for abandonment of the River Line in 2002, it considered Waldo as being not

only Milepost 0.0 of the River Line, but also Milepost 0.0. of the Passaic and Harsimus Branch as well.

Later, in 2007 the STB determined that what it termed the UNJRCC main line ran from Exchange Place, west past Waldo Avenue and Journal Square to Newark. (STB Finance Docket No. 34818, Decision of December 17, 2007 p. 1 and 2), and that the Harsimus Branch ran from the Harsimus Yard on the Hudson River to the Main Line at Waldo Avenue where it met with the main line, that Conrail called the Passaic and Harsimus Branch. (STB Finance Docket 34818 Decision of August 8, 2007 p. 6; Decision of December 17, 2007 p.2). That Conrail considered the Harsimus Branch as beginning at CP Waldo was confirmed in 2009 when it listed CP Waldo as also being Milepost 0.0 of the Harsimus Branch. (STB filing 224298, AB 167-1189-X, Notice of Exemption, filed Jan 7, 2009 p.2). The District Court for its part only determined that the Harsimus Branch was a regulated line of rail between Marin Boulevard and CP Waldo and not beyond, and that was as of 1976 only, not thereafter.

When the Board earlier granted Conrail permission to abandon the River Line in 2002, both it and Conrail knew that the abandonment extended along the entire length of a segment of the River Line running to CP Waldo where Conrail considered the River Line as meeting up with the "Passaic and Harsimus Branch," not the Harsimus Branch. The Board's 2007 decision (FD 34818), Conrail's 2002 River Line Abandonment Petition, Conrail's 2009 Exempt abandonment Petition, and the LLCs 2014 Petition all establish that by the time Conrail petitioned for the abandonment of the River Line in 2002 it considered that CP Waldo was milepost 0.0 for each of the Passaic and Harsimus Branch, the Harsimus Branch, and the River Line. To this day Conrail continues with this

convention and lists this same point, CP Waldo, as milepost 0.0 of the Harsimus Branch in its Exempt Abandonment petition. It was up to this same point and not beyond, that the District Court determined Conrail received as a line of rail in 1976.

The Board's decision however completely ignores this. In error, and in contradiction of the Board's own prior findings and decisions, the Decision ignores these conventions and states as follows at page 4:

> "However, the Board's decision regarding the River Line expressly authorized abandonment of a segment connecting to the Harsimus Branch "at Controller Point (CP) Waldo"" [footnote 14] [Emphasis added]

This is not correct. The STB's August 2014 Decision mis-states what was actually abandoned in the 2002 River Line abandonment. (See: Footnote 14 of the Board's Decision incorrectly citing the 2002 River Line abandonment.) The 2002 abandonment decision for the River Line, as cited in footnote 14, explains exactly what the Board permitted Conrail to abandon in 2002. In relevant part it states:

> This segment is composed of the following parts: (1) the River Line, from the connection to the Passaic and Harsimus Branch at Controller Point (CP) "Waldo" in Jersey City (approximately MP 0 .00) to the south side of Clifton Road in Weehawken (approximately MP 4 .7), including the River Yard…" [Emphasis added][STB Docket No. AB167-1067N Decision January 17, 2002 p.2 n.4].

Since the Passaic and Harsimus Branch runs west from CP Waldo as the connection to the national rail network, and the Harsimus Branch runs to the east from its connection to the national rail network at CP Waldo, then the River Line and the Harsimus Branch must come together at CP Waldo to connect to the Passaic and Harsimus Branch as the point of connection to the national rail network. They must do this following separate lines to CP Waldo, or else they follow the same line and merge.

That is the only way that the Harsimus Branch could remain connected to CP Waldo and not be severed by the abandonment of the River Line.

Yet the Board's August 2014 Decision relies upon that concept of separate lines when it states:

> Thus, the Board's abandonment authorization for the River Line did not include trackage that would sever the Harsimus Branch from the national transportation system. [Decision p.4].

This determination finding, no support in the record, is effectively an attempt by the Board to amend the 2002 Abandonment to un-abandon the 750 foot segment of track to save the Harsimus Branch from severance, 12 years after the fact; an act it has no authorization to undertake. See Conrail, supra 93 F.3d 793 (D.C. Cir. 1996)(STB jurisdiction ends upon abandonment).

It was not the Harsimus Branch but the Passaic and Harsimus Branch as understood by Conrail, to which the River Line was abandoned. This is confirmed by the fact that Conrail presently petitions for exempt abandonment of the Harsimus Branch up to CP Waldo and not a different point. Evidence that both the Board and Conrail intended to abandon the River Line not to the point of its connection with the Harsimus Branch but up to the point of its connection with the Passaic and Harsimus Branch at CP Waldo is the very fact that in accordance with the 2002 abandonment authorization, Conrail proceeded to rip up the entirety of the single track that connected both the Harsimus Branch and the River Line to CP Waldo/Passaic and Harsimus.

As the Passaic and Harsimus Branch runs west from CP Waldo, and the Harsimus Branch runs to the east from its connection to the national rail network at CP Waldo, then

the River Line and the Harsimus Branch must come to connect to the National Rail Network via the Passaic and Harsimus Branch at CP Waldo and not some other point short thereof. The only way that the Harsimus Branch could remain connected to CP Waldo and not have been be severed by the abandonment of the River Line would be if the Harsimus Branch continued west past the switch with the River Line to CP Waldo on a track separate from the River Line, a fact of which there is no proof, and in fact, all proof provided to the STB indicates that both lines shared the same track past the switch that connected them west towards CP Waldo for a length of 750 feet.

In their Petition, the LLCs maintain that the River Line and the Harsimus Branch merge together at a switch located approximately 750 feet to the east of CP Waldo and continue west from that point to CP Waldo. The Board acknowledges this argument by the LLCs, but ignores the fact that the two "lines" ran together in the same location on the same track since before 1976 when Conrail acquired both lines, and continued to do so at the time the STB authorized the abandonment of the River Line in 2002.

The Board's conclusion, besides being without factual foundation, makes no sense. The Board in 2002 was quite clear that the River Line was not abandoned only to its point of connection to the Harsimus Branch but to the Passaic and Harsimus Branch at CP Waldo. The historical documents in the Petition, by Conrail's previous filings with the STB, and by the STB's 2002 decision, establish that the River Line was abandoned to CP Waldo, the point that Conrail considered to be Milepost 0.0 of the Harsimus Branch, the Passaic and Harsimus Branch, and the River Line; no proof has ever been presented by any party or objector, or the Board, to the contrary. Nothing in the record establishes

that the River Line was abandoned 750 feet short of CP Waldo or that there were two separate lines running to CP Waldo.

If a genuine issue as to the location of CP Waldo (i.e. where the Harsimus Branch ran as determined by the District Court) currently exits, then this issue (the location of CP Waldo or the existence of multiple lines) must be resolved by the District Court and not the Board, as all that was determined by the District Court to date was that Harsimus Branch was a line of Rail between Marin Boulevard up to CP Waldo, not beyond.

Yet this is not a genuine issue. The STB's position does not rely on any fact, testimony or physical evidence, and instead is based on a factually unsupportable finding that the LLCs' position is completely wrong without any basis in the record for such a decision. The clearest illustration of the LLCs' position to the contrary of the Board's decision, and the correctness of the LLCs' position, is Exhibit U to the LLCs' Petition which shows the two lines running together on the same track, the River Line shown in green and the Harsimus Branch ("1420 line") shown in red in 1976 and the Dixon Declaration (Petition Exhibits O through O4).[6]

The petition clearly demonstrates that there was only one track and one line running to the east from CP Waldo and that pursuant to abandonment authority granted by the STB in abandonining the river line, Conrail tore up this one single track as further explained in the Petition (see e.g. pp. 20-21 and the Dixon Declaration, Exhibit O through O4 and Exhibit U thereto). Curiously, the party to these proceedings that should have the best information, Conrail, has essentially remained silent. The Board, diverging from its previous positions on the location of the point of connection of the River Line to the

[6] Also see similar picture as of 1976 found at Petition, Exhibit O through O4.

national transportation network, misperceived and rejected the LLCs' position that the River Line connected to the national rail network at CP Waldo. It did so without ever requiring Conrail to take a position on any factual issue, despite the fact that no party to these proceedings had raised any factual dispute concerning the connection point of the River Line to the national rail network, or any other material issue of fact.[7] The LLCs' record before the Board was uncontroverted, yet the LLCs were given no opportunity to address the issue raised *sua sponte* by the Board. The Board should grant that opportunity through this motion for reconsideration and correct its factual error, giving the LLCs full opportunity to address any other questions that may arise. The purpose of the proceeding under the Administrative Procedure Act should be to provide the LLCs with a full and fair opportunity for procedural due process and the ability to address any material issue not previously put in contest.

The STB's conclusion that the Harsimus Branch was not severed by the abandonment of the River Line in 2002, because they did not share the same trackage running east out of their common Milepost 0.0, identified by Conrail as "CP Waldo," not having any foundation in the record must be reversed.

CONCLUSION

The Board must establish that it has jurisdiction in this matter; it cannot be assumed. The removal of jurisdiction by the dramatic change in circumstances of decayed industrial area in 1976 to the later condition that neither needs or permits

[7] Conrail has an obligation, which continues throughout these proceedings, to advise the Board of any material mis-statement of fact by anyone seeking relief. No such objection to any aspect of the LLCs' petition was made. In fact, Conrail, otherwise silent, urged the Board to proceed with consideration of the Petition. See 49 C.F.R. § 1103.10 et seq.

interstate rail service must be acknowledged and addressed as a primary issue. The abandonment of the River Line and its pre-emptive effect on jurisdiction must likewise be acknowledged.

Respectfully submitted,

WATERS, McPHERSON, McNEILL, P.C.

By: _____
Daniel E. Horgan

Dated: August 29, 2014

VERIFICATION OF PETITION

Daniel E. Horgan, Esq., hereby verifies as follows:

1. I am an attorney-at-law admitted to practice before the United States District Court for the District of Columbia and the State of New Jersey and that I am lead counsel for the nine Limited Liability Company Petitioners in this matter. I make this verification in support of the Petitioners' Petition appended hereto based on my knowledge and as the attorney for the Petitioners.

2. The facts and representations set forth in the aforementioned Petition are true und correct to the best of my knowledge, information and belief.

3. I am qualified an authorized to file this petition

I verify under penalty of perjury that the foregoing is true and correct.

By: _____
Daniel E. Horgan

Dated: August 29, 2014

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, an attorney-at-law of New Jersey, New York, and the District of Columbia, hereby certify that on August 29, 2014, I caused service of this filing with the Surface Transportation Board to be made upon the Board by Electronic Filing and that all parties on the following service list were served by First Class Mail in accordance with the provisions of 49 C.F.R. §1104.12 and that a Payment Form in payment of the fee of $350.00 was transmitted via facsimile to Vivian Hardy at 202-245-0464 and Andrea Pope-Metheson via e-mail at Andrea.Pope-Matheson@stb.dot.gov.

By: _____
Daniel E. Horgan

Dated: August 29, 2014

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