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October 9, 2009

BY E-FILING

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-2001

225 849

**RE: STB Finance Docket No. 35296, Anthony Macrie-Continuance
in Control Exemption**

225 850

**STB Finance Docket No. 35297, New Jersey Seashore Lines, Inc.-
Operation Exemption**

Dear Ms. Quinlan:

In connection with the above-captioned proceedings, I am submitting on behalf of Anthony Macrie and New Jersey Seashore Lines, Inc. (collectively "NJSL"), respectively, a Motion for a Protective Order pursuant to 49 CFR 1104.14(b). This Motion relates to certain documents that NJSL will file with the Board on or before October 15, 2009, in response to the Board's request for an explanation as to why Clayton Companies, Inc., does not need Board authority to own an abandoned rail line over which it is granting operating rights to NJSL for common carrier railroad service.

Inasmuch as NJSL's response is due October 15, 2009, NJSL requests that the Board grant its Motion before that date.

Sincerely yours,


John D. Heffner

Enclosure

cc: Anthony Macrie

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

225 849

STB FINANCE DOCKET NO. 35296

**ANTHONY MACRIE
-- CONTINUANCE IN CONTROL EXEMPTION --
NEW JERSEY SEASHORE LINES, INC., AND
CAPE MAY SEASHORE LINES, INC.**

225 850

STB FINANCE DOCKET NO. 35297

**NEW JERSEY SEASHORE LINES, INC.
--OPERATION EXEMPTION--
CLAYTON COMPANIES, INC.**

**MOTION OF NEW JERSEY SEASHORE LINES, INC.
FOR A PROTECTIVE ORDER PURSUANT TO 49 CFR 1104.14(b)**

John D. Heffner
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Counsel for New Jersey
Seashore Lines, Inc.

Dated: October 9, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35296

**ANTHONY MACRIE
-- CONTINUANCE IN CONTROL EXEMPTION --
NEW JERSEY SEASHORE LINES, INC., AND
CAPE MAY SEASHORE LINES, INC.**

STB FINANCE DOCKET NO. 35297

**NEW JERSEY SEASHORE LINES, INC.
--OPERATION EXEMPTION--
CLAYTON COMPANIES, INC.**

**MOTION OF NEW JERSEY SEASHORE LINES, INC.
FOR A PROTECTIVE ORDER PURSUANT TO 49 CFR 1104.14(b)**

COMES NOW, Anthony Macrie and New Jersey Seashore Lines, Inc. (collectively "NJSL") pursuant to 49 CFR 1104.14(b) and request that the Board issue a protective order allowing it to make available to the Board under seal certain highly confidential documents and information in connection with its Response to the Board's decision dated September 25, 2009. Such highly confidential documents may include, among other things, pertinent excerpts from an unsigned copy of the Operating Agreement between Clayton Companies, Inc., and Ashland Railway, Inc., and pertinent excerpts from an unsigned copy of the Operating Agreement between Clayton Companies, Inc., and NJSL which contain highly sensitive commercial information the public disclosure of which would be harmful to

the parties. A protective order is especially necessary here to limit access to these documents only to outside counsel or consultants for parties who may appear in these proceedings. There are one or two parties who might submit comments adverse to NJSL and would likely appear *pro se*. Should those parties succeed in acquiring or operating a rail line, their interest could become akin to that of a commercial party. NJSL fears the failure of the Board to enter an order designating these documents as "highly confidential" would mean that these parties or any other party appearing *pro se* would have access to them and would defeat the purpose of obtaining a protective order in the first place. NJSL believes that this request for designating these documents "highly confidential may represent a case of first impression as it is comparatively rare that a party articulating a potential commercial interest appears before the Board without the assistance of legal counsel. However, the Board has on occasion refused to allow even in-house counsel access to highly confidential documents. See, e.g., CSX Corporation And CSX Transportation, Inc., Norfolk Southern Corporation And Norfolk Southern Railway Company—Control And Operating Leases/Agreements—Conrail, Inc., and Consolidated Rail Corporation, Finance Docket No. 33388 (STB served September 18, 1997)(where the Board refused to modify a protective order imposed in a merger proceeding to allow the Deputy General Counsel of the Port Authority of New York and New Jersey to review highly confidential information to the same extent and under the same restrictions applicable to outside counsel).

NJSL believes that the proposed order is similar to those previously approved and issued by the Board and should be utilized here. See, e.g., Keokuk Junction Railway Company d/b/a Peoria And Western Railway-

Lease and Operation Exemption-BNSF Railway Company, STB FD No. 34974 (served December 19, 2006).

Moreover, NJSL requests that the Board promptly issue a protective order because its Response is due October 15, 2009, and would like to have received that order before the Response due date.

Public disclosure of information subject to this protective order is not necessary for consideration or disposition of NJSL's Response. Accordingly, NJSL requests that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,


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(202) 296-3334

Counsel for New Jersey
Seashore Lines, Inc.

Dated: October 9, 2009

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means the Operating Agreements and furnished by New Jersey Seashore Lines, Inc. ("NJSL") in connection with NJSL's Response to the Board's September 25, 2009, decision in the above-captioned matter and any other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.

(d) "Proceedings" means those before the Surface Transportation Board (Board) concerning the transaction in STB Finance Docket Nos. 35296 and 35297, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket Nos. 35296 and 35297 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains commercial agreements of any kind; shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

6. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any

other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

8. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 35296 and 35297, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 35296 and 35297 and/or with any related proceedings.

9. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

10. No party may include Designated Material in any pleading, brief, discovery request, or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

12. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order.

14. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, or 3 above, such

production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

15. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

EXHIBIT A**UNDERTAKING-CONFIDENTIAL MATERIAL**

I, _____, have read the Protective Order served on _____, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket Nos. 35296 and 35297, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 35296 and 35297, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Finance Docket Nos. 35296 and 35297 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that New Jersey Seashore Lines, Inc., and Clayton Companies, Inc., or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not

be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____

Exhibit B**UNDERTAKING—HIGHLY CONFIDENTIAL MATERIAL**

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, governing the production and use of Highly Confidential Information and Highly Confidential Documents in STB Finance Docket Nos. 35296 and 35297, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Highly Confidential Information or Highly Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 35296 and 35297, any related proceedings before the Surface Transportation Board (Board), or any judicial review proceedings in connection with STB Finance Docket Nos. 35296 and 35297 and/or with any related proceedings. I further agree not to disclose any Highly Confidential Information, Highly Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me; that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners; and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated

or stamped as "HIGHLY CONFIDENTIAL," other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that New Jersey Seashore Lines, Inc., and Clayton Companies, Inc., or other parties producing Highly Confidential Information or Highly Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____