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ENTERED
Office of Proceedings
December 1, 2022
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By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Finance Docket No. 36619, *City of North Chicago, Illinois -- Petition for
Declaratory Order*

Dear Ms. Brown:

On behalf of Respondent 2nd & Main, LLC, this is a request for leave to file the attached Motion two days out of time. The delay in filing was occasioned by confusion in regard to which of the offices representing Respondent was to make the filing. The attorneys for Petitioner are being served by expedited means.

Respectfully,

/s/ Thomas F. McFarland

Thomas F. McFarland
One of the Attorneys for Respondent

TMcF:kl:1754-A\efSTB2

cc: Mary Jean Dolan, Esq., *mdolan@ancelglink.com*
Thomas D. Dicianni, Esq., *tdicianni@ancelglink.com*
Adam B. Simon, Esq., *asimon@ancelglink.com*
John Quinn, Esq., *jquinn@grayslakelaw.com*
Mr. Philip N. Dahl, *philipndahl@msn.com*

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE CITY OF NORTH CHICAGO,)
ILLINOIS -- PETITION FOR)
DECLARATORY ORDER)

**MOTION TO REJECT THE CITY'S RESPONSE
DATED NOVEMBER 9, 2022**

2ND & MAIN, LLC
360 Lake Street
Antioch, IL 60002-1404

Respondent

THOMAS F. McFARLAND^{1/}
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Attorneys for Respondent

Due Date: November 29, 2022

^{1/} Thomas F. McFarland is entering an additional appearance on behalf of Respondent.

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE CITY OF NORTH CHICAGO,	)	FINANCE DOCKET
ILLINOIS -- PETITION FOR	)	NO. 36619
DECLARATORY ORDER	)	

**MOTION TO REJECT THE CITY’S RESPONSE
DATED NOVEMBER 9, 2022**

Pursuant to 49 C.F.R. § 1117.1, Respondent, 2nd & Main, LLC (Main) hereby moves the Board to reject a Response dated November 9, 2022 filed by Petitioner, the City of North Chicago, Illinois (the City). Main submits the following in support of its Motion.

“Litigation must end somewhere” *See ICC v. Baltimore & Annapolis R. Co.*, 398 F.Supp. 454 (D., Md., Balt. Div., 1975). In granting a motion to dismiss a repetitive pleading in that case, Judge Blair said (*id.* at 470):

To allow a plaintiff to shuttle back and forth between the ICC and the courts asserting new claims each time would be inequitable to the defendant . . .

The City’s filing of multiple repetitive replies in the case at hand is not only contrary to the Board’s orderly procedures, it also constitutes blatant harassment. The City should not be permitted to bully Main into submission. In view of the city’s abusive behavior, its Response should be rejected.

“A reply to a reply is prohibited” 49 C.F.R. § 1104.13(c). A person seeking to file a reply to a reply has the burden to show “good cause” for relief from that prohibition. The term “good cause” means substantial grounds to support a certain action (*see* <https://legal->

dictionary.thefreedictionary.com/good&cause). Good cause is a relative term whose meaning is dependent on the circumstances of each case (*Id.*).

The City's November 9, 2022 Response is its third "Bite of the Apple", i.e.,

- (1) Rebuttal filed on August 31, 2022
- (2) Surrebuttal filed on September 29, 2022
- (3) Additional Response filed on November 9, 2022

Repetitive pleadings of that nature require an extraordinary showing of good cause. Cf. *Hayfield Northern R. Co. v. Chicago & N.W. Tr. Co.*, 467 U.S. 622, 635 (1984) (unfair to allow a second "bite of an apple" when person participated in, and then withdrew from, statutory negotiations). The City has not made such an extraordinary showing.

The City's generalized reference to an alleged need to respond to new matter raised in Main's pleading does not even come close to establishing the good cause necessary for the City's requested relief.

WHEREFORE, for the reasons stated, the City's Response dated November 9, 2022 should be rejected. In addition, the City should be admonished to discontinue filing repetitive pleadings that are designed to bully and harass Main into submission.

Respectfully submitted,

2ND & MAIN, LLC
360 Lake Street
Antioch, IL 60002

Respondent

/s/ Thomas F. McFarland

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Grayslake, IL 60030

Attorneys for Respondent

Due Date: November 29, 2022

CERTIFICATE OF SERVICE

I certify that on November 29, 2022, the foregoing document, Motion To Reject The City's Response Date November 9, 2022, was served by e-mail, on Mary Jean Dolan, Esq., mdolan@ancelglink.com, Thomas G. DiCianni, tdicianni@ancelglink.com, and Adam B. Simon, asimon@ancelglink.com, Ancel Glink, 140 South Dearborn Street, Suite 600, Chicago, IL 60603.

/s/ Thomas F. McFarland
THOMAS F. McFARLAND