UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

JUDY M. PAUL and **CIVIL ACTION** WILLIE MACKIE, SR. NO. 07-993 Plaintiffs, **SECTION "K" VERSUS** SEWERAGE AND WATER BOARD OF * **MAGISTRATE** NEW ORLEANS, BOARD OF DIVISION (2) **COMMISSIONERS FOR THE** ORLEANS LEVEE DISTRICT, BOARD * **Removed from the Civil District** OF COMMISSIONERS OF THE PORT Court for the Parish of Orleans, State of Louisiana, Division "I-14" OF NEW ORLEANS, THE CITY OF NEW ORLEANS, NEW ORLEANS PUBLIC BELT RAILROAD **COMMISSION, CSX** TRANSPORTATION, INC., BNSF RAILWAY COMPANY, f/k/a **BURLINGTON NORTHERN AND** SANTA RE RAILROAD COMPANY, and THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

MOTION TO DISMISS THE CLAIMS OF THE PLAINTIFFS PURSUANT TO F.R.C.P. RULE 12(b)(6)

Defendants.

NOW INTO COURT comes defendant, the Public Belt Railroad Commission for the City of New Orleans, through undersigned counsel, and respectfully moves the court as follows:

Defendant moves to dismiss the claims of the plaintiffs, pursuant to F.R.C.P. Rule 12(b)(6), because the complaint fails to state a claim against defendant upon which relief can be granted, for the reasons fully set forth in the accompanying memorandum in support of this motion.

Respectfully submitted,

HAMILTON, BROWN & BABST

GALEN S. BROWN, T.A. (#3556)

KAREN E. MILNER (#8499)

601 POYDRAS STREET, SUITE 2750 NEW ORLEANS, LOUISIANA 70130

TELEPHONE: (504) 566-1805

FAX: (504) 566-1569

E-MAIL: gbrown@hamiltonfirm.net

Attorneys for Defendant, Public Belt Railroad Commission for the City of New Orleans

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing has been served upon all counsel of record by electronic notice in accordance with Local Rules to those counsel receiving electronic notice, and all others by depositing same in the United States Mail, postage prepaid and properly addressed, this 28th day of February, 2007.

GALENS BROWN