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September 21, 2023

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: STB Docket No. FD 36710—*Richmond Waterfront Ind. Park, LLC*—*Petition for Declaratory Order*

Dear Ms. Brown:

I am one of the attorneys who represents the Petitioner, Richmond Waterfront Industrial Park, LLC (“RWIP”) in the captioned proceeding. I write this letter to respond to the letter submitted in this docket by William A. Mullins, attorney for The Philadelphia Belt Line Railroad Company (“PBL”) on September 14, 2023 (“Mullins Letter”), with respect to the Petition for Declaratory Order filed by RWIP in the referenced docket (“Petition”).

The Mullins Letter was prompted by the ruling of a three-judge motions panel in the Superior Court of Pennsylvania¹ to deny an application by RWIP for stay of the State Court Appeal until the Surface Transportation Board (“Board”) has rendered a decision with respect to the Petition. Parenthetically, the Superior Court panel does not state its reason(s) for this action.

¹ *Richmond Waterfront Industrial Park, LLC v. Philadelphia Belt Line Railroad Company*, March Term, 2022, No. 1172 EDA 2023, In the Superior Court of Pennsylvania (“State Court Appeal”).

Law Office of Thomas W. Wilcox

Letter to Cynthia T. Brown

Page 2

In his letter, Mr. Mullins repeats PBL's requests in its reply to the Petition that the Board either dismiss the Petition² or, in the alternative, hold it in abeyance until the State Court Appeal has progressed further in the state court system. RWIP submits that the appellate court's ruling does not preclude the Board from granting the Petition. The Board's discretion to issue declaratory orders pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 is extremely broad, and for the reasons set forth in the Petition it should be exercised under these particular facts and circumstances to declare the jurisdictional status of the easement in question.

RWIP also reiterates that the appellate court's ruling does not prevent the Board from providing informal guidance to the court on the jurisdictional issue. STB Docket No. 36167, *Jimmy Lee Waneck and Starr Swearingen Waneck, et. al—Petition for Declaratory Order* (Served October 31, 2018) at 3,4; see STB Docket No. 34052, *Green Mountain R.R.—Petition for Dec. Order* (STB served May 28, 2002) at 4 (the Board does so "to provide guidance to the Court and to the parties," which it does in many cases by "summariz[ing] relevant court and agency case law addressing similar situations."). Such guidance to the appellate court is sorely needed in this case, where the lower court clearly misapplied the applicable law and statutory authorities.

In view of the foregoing, RWIP again requests that the Board deny PBL's request to deny the Petition or, alternatively, to hold it in abeyance. If the Board is considering granting either of PBL's requests in light of the appellate court's ruling, RWIP submits that holding the petition in abeyance would result in the least amount of harm to RWIP's interests.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Thomas W. Wilcox
Attorney for Richmond Waterfront
Industrial Park

Cc: Mr. Jeffrey P. Lewis
Mr. Stephen Foxman
Mr. David Wolf

² Through its Petition, RWIP seeks an order declaring that the Board does **not** have jurisdiction over a railroad easement as either a line of railroad under 49 U.S.C. §10901 or as a "sidetrack" under 49 U.S.C. §10906, and therefore **not** part of the federal rail system, over which easement PBL contends that it has an ownership interest, which easement traverses real estate owned by RWIP. In the alternative, RWIP asks the Board to provide informal guidance to the appellate court concerning the legal status of this easement.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2023, copies of the foregoing Letter were served by electronic mail on the parties of record on the official service list for Docket No. FD 36710.



Thomas W. Wilcox