

EXPEDITED CONSIDERATION REQUESTED

301316

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36463

ENTERED
Office of Proceedings
November 30, 2020
Part of
Public Record

**THE LOUISVILLE AND JEFFERSON COUNTY RIVERPORT AUTHORITY -
PETITION FOR DECLARATORY ORDER**

**MOTION FOR EXTENSION OF TIME TO
REPLY TO PETITION FOR DECLARATORY ORDER**

Pursuant to 49 C.F.R. §1104.7 the New Albany Main Street Properties, LLC, which does business as the Port of Louisville (“Port of Louisville”), by and through its undersigned counsel, hereby requests the Surface Transportation Board (“Board”) to extend the time period for the Port of Louisville to file its Reply to the Petition for Declaratory Order (“Petition”) filed in this proceeding on November 18, 2020 by The Louisville and Jefferson County Riverport Authority, d/b/a Louisville Riverport Authority (“LRA”). For the reasons set forth below the Port of Louisville respectfully asks that the due date for its reply be extended to January 22, 2021, which is 45 days from the current due date of December 8, 2020. In support of this request the Port of Louisville states as follows:

I. Background

The Port of Louisville has provided rail operations at the port facility described in the Petition pursuant to a long-term lease that was first entered into in 2009. In its Petition, LRA seeks rulings from the Board that (1) the Port of Louisville has been improperly operating on rail lines in and around the port without the required authorization from the Board (2) the Port of

Louisville should cease rail operations immediately, and (3) LRA can seek authority from the Board to have another railroad operate on the rail lines. The fact that the Petition seeks a ruling from the Board that would terminate the ability of the Port of Louisville to conduct its business should be reason enough for the Board to take a liberal view of a request to extend the due date for a reply to the Petition. However, the Petition also seeks a ruling based on numerous rail construction and operating decisions and filings by various parties that go back to 1987 when the railroad tracks in and around the port were first constructed. Petition at 15-21. The Petition also relies upon factual and legal arguments regarding the potential relevance of Federal Railroad Administration safety jurisdiction.

Moreover, the Petition obscures from the Board that it is part of an extremely aggressive effort begun by LRA in 2019 to oust the Port of Louisville as the operator of the port because, the Port of Louisville believes, LRA is no longer satisfied with the terms of the lease between the two parties. The Petition's brief reference in a footnote to a "forcible detainer"¹ complaint filed in Kentucky district court (Petition at 15, note 1) belies the fact that LRA's effort has been the subject of several pending court cases it has initiated, as well as a court ordered arbitration proceeding involving numerous alleged "breaches" of the current lease that have been contrived by LRA in order to oust the Port of Louisville².

Additionally, the Port of Louisville retained the undesigned counsel to represent it in this proceeding on November 24, 2020, four business days after the Petition was filed. Upon reviewing the extensive factual and legal background presented by the Petition and upon being

¹ A Forcible Entry and Detainer is an action that a landlord, or new property owner can take if the existing occupant refuses to leave after appropriate notice. *See, e.g.*, Kentucky Statutes §383.200

² Parenthetically, the various courts and the arbitration panel have ruled against LRA in each of these actions.

informed by the Port of Louisville of extensive additional relevant information that was omitted from the Petition, the undersigned counsel immediately contacted counsel for LRA the afternoon of November 24 to ask for LRA's consent to the 45-day extension being requested in this Motion. Counsel for LRA responded the afternoon of November 25 - the day before the Thanksgiving Holiday weekend - that not only had LRA declined to consent to a 45-day extension, LRA firmly opposed *any* extension of the due date to reply to its Petition established by the Board's rules.³ LRA's refusal to consent to any extension of time to for the Port of Louisville to reply to its Petition under these circumstances is unfortunate, wasteful of the resources of the parties and the Board, and unreasonable.

II. Argument

The requested extension of time is reasonable and appropriate under these circumstances. First, while the Port of Louisville's retention of counsel occurred in a reasonable amount of time after the Petition was filed, the timing coincided with onset of the Thanksgiving Holiday weekend which essentially left it and its counsel with about half of the normal 20 days allotted for replies. Second, the factual background and context of the Petition, which include (but are not limited to) (1) agency actions and authority going back over 30 years; (2) a decade of lease negotiations and administration; and (3) several ongoing court and arbitration proceedings, are considerably more extensive than the Petition reveals, and it will take time to review and analyze all relevant

³ The Port of Louisville respectfully submits that this Motion is being filed at the first reasonable opportunity to do so. Counsel was informed of LRA's refusal to agree to any extension on the eve of the Thanksgiving Holiday too late to draft, circulate, and file a motion with the Board when many client representatives and co-counsel were traveling or otherwise unavailable. This was the same situation for Friday, November 27, when not only were many offices closed and people traveling, but one of the undersigned counsel for the Port of Louisville was in the process of moving his residence to another state. For these reasons, the Port of Louisville respectfully submits that good cause exists to waive the requirement in 49 C.F.R. §1104.7 that extension requests be submitted not less than 10 days before the due date.

information so as to provide an appropriate response. Third, the motivation of LRA and its actions in the other proceedings are highly relevant to the Board's consideration of the Petition,⁴ and the voluminous evidentiary records of those proceedings all have significant relevance to the allegations LRA has raised in the Petition for support of its request for declaratory relief. Finally, the 45 days requested is very reasonable under all the circumstances, considering the foregoing as well as when one takes into account the upcoming Christmas, Hanukkah, and other holiday seasons.

III. Conclusion

For all the foregoing reasons the Port of Louisville submits that good cause exists for the Board to expeditiously extend the due date for the Port of Louisville to reply to LRA's Petition for Declaratory Order to January 22, 2021.

Respectfully submitted,



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⁴ For example, the evidence in the ongoing proceedings has established that LRA engaged in a conspiracy and secret negotiations with another operator to replace the Port of Louisville, and even entered into a lease with the competitor that was contingent upon the removal of the Port of Louisville.

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of November 2020, a copy of the foregoing Motion for Extension of Time to Reply to Petition for Declaratory Order was served by email on all parties on the official Service List for Docket No. FD 36463



Thomas W. Wilcox