

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36463

ENTERED
Office of Proceedings
December 1, 2020
Part of
Public Record

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

REPLY IN OPPOSITION TO MOTION FOR EXTENSION OF TIME

Petitioner, The Louisville and Jefferson County Riverport Authority, d/b/a Louisville Riverport Authority ("LRA"), hereby respectfully files its reply in opposition to the Motion for Extension of Time to Reply to Petition for Declaratory Order by New Albany Main Street Properties, LLC, which does business as the Port of Louisville ("Port of Louisville"). LRA petitioned the Surface Transportation Board ("STB" or "Board") for a declaratory order on November 18, 2020, to eliminate uncertainty pursuant to its authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, finding (1) the Port of Louisville has been improperly operating on rail lines in and around this port without the required authorization from the STB, (2) the Port of Louisville should cease rail operations immediately on said rail lines, and (3) LRA can seek authority from the STB to have another railroad operate on said rail lines. The Port of Louisville seeks an additional 45 days from the required due date of December 8, 2020 to file its reply.

The Port of Louisville argues that a 65-day period to reply is appropriate here because of the holiday season, the complexity of the factual background of the case, and LRA's motivation for filing this case based on other litigation between these parties. While the Port of Louisville claims LRA's intent is to oust it as the port operator, the LRA's real motivation for filing this

case at the STB is to ensure that the railroad lines at issue here are being operated in accordance with federal law.

As noted in LRA's Petition for Declaratory Order, the Port of Louisville has refused in writing on October 29, 2020, to abide by Federal Railroad Administration ("FRA") regulations on the basis that it claims to be a "plant railroad." (See Exh. D in Pet.). This refusal to abide by the safety laws continues to this day despite the FRA's August 17, 2020, advisory email letter stating that the Port of Louisville is not a "plant railroad" and is subject to its jurisdiction. (See Pet. at 10-14). On or around this time, LRA also advised the Port of Louisville that it would need to obtain STB authority to operate on these rail lines. Once LRA received the Port of Louisville's letter stating it did not have to comply with FRA regulations because it was a "plant railroad", LRA felt compelled to file this Petition for Declaratory Order to bring its rail property in compliance with STB laws as well.

While the Port of Louisville claims LRA's refusal to consent to its extension request is "unfortunate, wasteful of the resources of the parties and the Board, and unreasonable", LRA simply wants to have the rail operations on its property brought into full compliance with federal law as soon as possible. LRA believes a decision by the Board here will help that to happen. The Port of Louisville has been operating on these rail lines for eleven years without any interest in complying with federal law. This desire by LRA to resolve this matter in an expedited manner certainly is reasonable.

Therefore, LRA respectfully asks the Board to deny this request for an extension and urges it to expedite this proceeding.

/s/ Daniel Elliott
Daniel Elliott PLLC
2000 Pennsylvania Avenue NW
Suite 7000
Washington, DC 20006
(703) 863-9670

Counsel for LRA

December 1, 2020

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on December 1, 2020, I served a copy of this Reply in Opposition to Motion for Extension of Time on counsel, Thomas W.

Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street NW, Suite 500, Washington, D.C.

20007, TWilcox@GKGLaw.com , known to represent the New Albany Main Street Properties,

LLC, which does business as the Port of Louisville, by email.

/s/Daniel R. Elliott