

November 4, 2022

Kathryn K. Floyd

T 202.344.4696
F 202.344.8300
KKFloyd@Venable.com

305595

Via Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
November 4, 2022
Part of
Public Record

**RE: Oakland Global Rail Enterprise—Petition for Exemption—Authority to
Operate a Rail Line in Oakland, California—Finance Docket No. 36312—
STATUS UPDATE**

Dear Ms. Brown,

Pursuant to the Board's May 5, 2022 Decision ("Decision"), I am providing an update on behalf of Oakland Global Rail Enterprise, LLC ("OGRE") regarding the legal dispute between OGRE, Oakland Bulk & Oversized Terminal, LLC ("OBOT") on the one hand, and the City of Oakland ("City") on the other hand.

Following the City Attorney's office publishing its press release,¹ OGRE and OBOT attempted to negotiate a settlement with the City to resolve the pending legal actions involving the rail-to-ship bulk commodity marine terminal ("Terminal") to be constructed at that portion of the former Oakland Army Base commonly known as the West Gateway ("West Gateway").

Although the City was provided a copy of the Decision, during the negotiations, the City insisted that certain provisions be included in any settlement (primarily related to the offloading of commodities at the Terminal) that would restrict OGRE's rail switching services at the West Gateway. Mindful of its potential future obligations as a common carrier under 49 U.S.C. § 11101(a) "to transport any commodity, including coal or coke, upon reasonable request by a shipper,"² OGRE objected to these requested provisions and any other provisions that could interfere with OGRE's common carrier obligations; for clarity, OBOT and Insight Terminal

¹ City of Oakland Agrees to Settlement Framework to Resolve Lawsuits Regarding the 66-Year Ground Lease of the West Gateway of the Former Oakland Army Base for a Bulk Commodity Terminal, (Feb. 2, 2022), https://www.oaklandcityattorney.org/News/Press%20releases/Ground_Lease_Settlement.html.

² Decision at 3.

Ms. Cynthia T. Brown
Surface Transportation Board
November 4, 2022
Page 2

Solutions, LLC (the subtenant) remained open to restrictions applicable to the Terminal but not the rail operations.

While OGRE and OBOT have acted reasonably and in good faith to settle the matter, a settlement has not been reached. OGRE and OBOT requested a new trial date, and trial currently is scheduled for April 21, 2023.

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

Sincerely,

A handwritten signature in black ink, reading "Kathryn K. Floyd". The signature is written in a cursive, flowing style.

Kathryn K. Floyd

Counsel for Oakland Global Rail Enterprise

cc: Parties of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this November 4, 2022, I caused a copy of the foregoing Status Update to be served on all parties of record by email or first- class mail, postage prepaid.

/s/ Margaret K. Fawal
Margaret K. Fawal