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August 28, 2023

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August 28, 2023

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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 Industrial Park, LLC – Petition for Declaratory Order*

Dear Ms. Brown:

The undersigned counsel for Petitioner Richmond Waterfront Industrial Park (“RWIP”) hereby submits this brief response to the Reply in Opposition to Petition for Declaratory Order filed by the Pennsylvania Belt Line Railroad Company (“PBL”) on August 17, 2023. RWIP submits that good cause exists to accept this letter into the record of this proceeding in the interests of compiling a complete record. Docket No. FD 36463, *The Louisville and Jefferson County Riverport Authority - Petition for Declaratory Order* (served October 22, 2021) at 4, citing *City of Alexandria—Pet. for Declaratory Order*, Docket No. FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”).

Tellingly, PBL’s reply to the Petition does not even attempt to respond with any facts to counter RWIP’s extensive argument and evidence that the tracks and right-of-way easement at issue are not subject to the Board’s jurisdiction, and never have been. Instead, PBL asks the Board to either deny the Petition on procedural grounds, or to hold it in abeyance. Either would deprive the Superior Court of Pennsylvania of much needed guidance on the critical threshold jurisdictional issue. From a procedural standpoint, the Board clearly has broad discretion to grant the petition under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, and it should commence a proceeding to resolve the issue and advise the Superior Court.

RWIP also reiterates that if the Board is reluctant to issue a declaratory order, it still can and should issue guidance to the Superior Court. Contrary to PBL’s gymnastics concerning the

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application of prior precedent to this proceeding, the fact of the matter is that there is “no authority that suggests the Board is prohibited from issuing purely advisory guidance, even where a court has initially ruled on an issue. Indeed, the Board often provides guidance to parties and courts on ICCTA preemption issues. It is appropriate to issue such guidance, even where a case is pending in court (or a court has already addressed some of the issues presented), because the guidance issued by the Board in such cases is purely advisory.” Docket No. FD 36167, *Jimmy Lee Waneck and Starr Swearingen Waneck, et al – Petition for Declaratory Order* (denial of recon. served October 31, 2018) at 4. Informal guidance from this Board on the correct legal rules and principles governing the jurisdictional status of rail tracks would provide important context to the Superior Court’s deliberations.

Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,



Thomas W. Wilcox

*Attorney for Richmond Waterfront Industrial Park,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August 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