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VIA E-FILING

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

Re: Richmond Waterfront Industrial Park, LLC – Petition for Declaratory Order, FD 36710

Dear Ms. Brown:

On April 9, 2024, the Richmond Waterfront Industrial Park, LLC (“RWIP”) filed a Supplement to its previously filed Petition for Declaratory Order (the “Supplement”). RWIP's Supplement provided the Board with a copy of the March 25, 2024 Opinion issued by a 3-judge panel of the Superior Court of Pennsylvania, one of Pennsylvania’s two state intermediate appellate courts (“Opinion”). The Opinion reenforced the position advocated by the Philadelphia Belt Line Railroad Company (“PBL”) in state court and at the Surface Transportation Board (“STB” or “Board”), which is that the tracks at issue in the state court and in this proceeding are within the exclusive jurisdiction of the STB.

RWIP continues to insist that the two courts are wrong. Specifically, it states:

Consequently, there are now two state court decisions that clearly misstate and misapply the legal rules governing whether a segment of railroad track is a line of railroad subject to the Board’s exclusive jurisdiction. RWIP intends to pursue its efforts to correct these errors through the Pennsylvania state court appeals process.^[fn]

Supplement at 4.

Given that RWIP intends to appeal the Opinion to the Supreme Court of Pennsylvania, PBL reiterates its previous comments that there is no need for this Board to act on the Petition for Declaratory Order until such time as the state court process is complete. Indeed, if the Supreme Court were to find that RWIP is correct and the two lower state courts have it wrong

because the tracks at issue are not within the exclusive jurisdiction of the STB, then RWIP can pursue its quiet title action in state court. In that instance, there is no role for the Board, or, if there is, the state trial court judge at that time can request guidance from the STB. On the other hand, if the Opinion is upheld, then either RWIP or PBL can request this Board to move forward with the Petition.

Nothing the Board says or does while the appeal is pending will impact the appeal. The Supreme Court of Pennsylvania must base its decision on the record below. Purely as a matter of state law, the record below cannot be supplemented with an opinion from the STB. See, e.g., Del Ciotto v. Pa. Hosp. of the Univ. of Pa. Health Sys., 177 A.3d 335, 344 n.9 (Pa. Super. Ct. 2017) (declining to consider a document attached to an appellate brief that was produced after trial court entered judgment); Rost v. Ford Motor Co., 637 Pa. 625, 666, 151 A.3d 1032, 1056, fn 18 (2016) (rejecting attempt to supplement record on appeal because the information was not part of the record on appeal when the lower court rendered its decision). If the case is reversed or remanded to the state trial court, then an opinion of the STB may have relevance. But until that time, nothing the Board says would have any legal effect on the state court proceedings. Accordingly, there is no need for the Board to act until such time as the state appeals process has been completed. RWIP's request to move forward with the Petition is premature and should be denied.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins
Attorney for the Philadelphia Belt Line Railroad
Company

cc: Parties of Record