

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36768

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April 30, 2024
Part of
Public Record

City of Philadelphia – Petition for a Declaratory Order

READING INTERNATIONAL, INC.'S
VERIFIED MOTION FOR EXTENSION OF TIME

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 GRANTED Office of Proceedings	DECISION ID NO.: <u>52134</u>
	DECIDED DATE: <u>5/1/2024</u>
	SERVED DATE: <u>5/1/2024</u>
	APPROVED: <u><i>meadain</i></u>
	Director
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Dated: April 30, 2024

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City of Philadelphia – Petition for a Declaratory Order

**READING INTERNATIONAL, INC.’S
VERIFIED MOTION FOR EXTENSION OF TIME**

Pursuant to 49 C.F.R. § 1104.7(b), Reading International, Inc. (“Reading”) respectfully submits its Verified Motion for Extension of Time (“Motion”) to file a reply to the City of Philadelphia’s (the “City”) Petition for a Declaratory Order (“Petition”), which the City filed in this proceeding on April 19, 2024. Reading was served with a copy of the Petition via U.S. Mail, which counsel did not physically receive until this morning, April 30, 2024. Under 49 C.F.R. § 1104.13(a), the deadline to file a reply is twenty (20) days from the date the petition was filed, making Reading’s deadline to respond May 9, 2024. The STB has discretion to grant extensions of time to reply to petitions upon a request and for good cause. *See* 49 C.F.R. § 1104.7(b). The relevant factual background is complicated and dates back more than forty (40) years. The City’s request also involves legal issues that arguably implicate the Surface Transportation Board’s (“STB”) jurisdiction. Reading therefore seeks an extension of time to June 4, 2024, to respond to the City’s Petition so that Reading may fully investigate and address the factual and legal issues raised in the Petition. The City’s counsel, David Smith, Esq., consented to this requested extension of time, up to and including June 4, 2024.

The City seeks declaratory relief that: (a) the right to operate a railroad line on the property at issue (the Viaduct) was abandoned pursuant to a 1983 application to the Interstate Commerce Commission (“ICC”); (b) the STB has no remaining jurisdiction over the ownership, control, or use of the Viaduct because the line was allegedly abandoned; and (c) Reading (which the City acknowledges is the owner of the Viaduct) cannot claim a right to use the Viaduct for railroad purposes. *See Pet.* at 1.

As the City noted, over forty (40) years ago, Reading Railroad operated and utilized railroad tracks on top of the Viaduct supporting the 9th Street Branch of the Reading Railroad that crosses over Spring Garden Street in Philadelphia. *See Pet.* at 2. In 1976, Reading Railroad transferred the right to operate railroad assets to Consolidated Rail Corporation (“Conrail”) under the Regional Rail Reorganization Act, 45 U.S.C. § 701 *et seq.* *See id.* Reading Railroad, however, retained ownership of the real property related to the Viaduct, among other assets. *See id.* Reading Railroad eventually became Reading. *See id.*

On March 10, 1983, Conrail applied to the ICC for “approval of the abandonment of [Conrail’s] operation of the lines of rail...” *See id.*, Ex. A at ¶ 4. Notably, Conrail’s “proposed abandonment” related “only to Conrail’s operation of the lines” because Conrail did not own the lines. *See id.*, Ex. A at ¶¶ 4, 6. In November 2023, in an action against Reading under the Abandoned and Blighted Property Conservatorship Act, 68 Pa. Stat. § 1101 *et seq.*, the United States District Court, Eastern District of Pennsylvania confirmed that Reading had only transferred to Conrail “an easement to operate on the 9th Street Branch.” *See Scioli Turco, Inc. v. Philadelphia & Reading R.R. Co.*, No. CV 21-563, 2023 WL 7646535, at *1 (E.D. Pa. Nov. 14, 2023). The court also confirmed that Reading retained “the fee interests in various parcels related to [its] historic railroad operations,” including the 9th Street Branch. *See id.* The court concluded that the

plaintiffs' suit was preempted by 49 U.S.C. § 10501(b), and that the STB had jurisdiction. *See id.* at *2-3. The court found that Conrail's application for abandonment "relate[d] only to Conrail's operation of" the 9th Street Branch as Conrail only had an easement over the line. *See id.* Further, "Conrail's abandonment simply does not affect the STB's current jurisdiction over the 9th Street Branch and the rights of its owner, Reading." *See id.*

Nevertheless, the City now seeks a declaration related to these issues dating back over forty (40) years. The City seeks this declaratory relief *from the STB* even though the City contends that the STB does not have jurisdiction over the "ownership, control, or use of the Viaduct...", *see* Pet. at 1, contrary to the conclusions of the District Court. *See Scioli Turco, Inc.*, 2023 WL 7646535, at *1-4.

Reading's reply will necessitate a review of the facts and files related to these issues, which are several decades old. Reading will also require an affidavit from a witness who will clarify and correct several allegations in the Petition. Therefore, Reading respectfully requests an extension of time to file a reply to the Petition for a Declaratory Order, extending its deadline to reply from May 9, 2024 to June 4, 2024.

On April 30, 2024, Reading's counsel contacted counsel for the City who indicated that the City consented to an extension of time for Reading to file its reply up to and including June 4, 2024.

Respectfully submitted,

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Attorneys for Reading International, Inc.

Dated: April 30, 2024

CERTIFICATE OF SERVICE

I, John Voorhees, hereby certify that a copy of the foregoing Verified Motion for Extension of Time dated April 30, 2024, was sent on this day by electronic mail and U.S. Mail to the following in this proceeding:

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/s/ John Voorhees
John Voorhees

VERIFICATION

I, John Voorhees, Shareholder with Greenberg Traurig, verify under penalty of perjury that the foregoing Verified Motion for Extension of Time dated April 30, 2024, is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on April 30, 2024

/s/ John Voorhees
John Voorhees
Denver County, Colorado