

ENTERED
Office of Proceedings
June 21, 2024
Part of
Public Record

June 21, 2024

VIA E-FILING

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

Re: *City of Philadelphia – Petition for Declaratory Order*, STB Finance Docket No. 36768

Dear Ms. Brown:

I have attached for e-filing the City of Philadelphia's (1) Motion for Leave to File Reply to the Reply and (2) Reply to Reading International, Inc.'s Reply to the City's Petition for Declaratory Order in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Charles A. Spitulnik

Attachments

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36768

City of Philadelphia – Petition for a Declaratory Order

MOTION FOR LEAVE TO FILE REPLY TO THE REPLY

David Smith
Ira Neil Richards
Matthew H. Davis
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500e
Philadelphia, PA 19102
(215) 575-7062
dsmith@dilworthlaw.com
irichards@dilworthlaw.com
mdavis@dilworthlaw.com

Charles A. Spitulnik
Ayelet Hirschhorn
Grant M. Glovin
Kaplan Kirsch LLP
1634 I (Eye) Street, Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com
ahirschhorn@kaplankirsch.com
gglovin@kaplankirsch.com

Attorneys for the City of Philadelphia

Dated: June 21, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36768

City of Philadelphia – Petition for a Declaratory Order

MOTION FOR LEAVE TO FILE REPLY TO THE REPLY

The City of Philadelphia (“City”) respectfully moves for leave to file a Reply to the Reply of Reading International, Inc. (“Reading”). This submission is necessary because Reading’s Reply both raises what are effectively affirmative defenses and mischaracterizes the record. Certain arguments in the Reply are, in addition to being inconsistent with straightforward legal principles, non sequiturs. As such, the arguments would have been impossible for the City to foresee and address in its Petition for a Declaratory Order. Other arguments mischaracterize historical events. Good cause therefore exists to permit the City to respond to Reading’s novel and poorly supported arguments. In anticipation of a favorable ruling on this Motion, the City is submitting the proposed Reply along with this Motion.

The Board has discretion to accept a reply to a reply “when it is appropriate to do so.” *Rail Switching Servs., Inc.—Operation Exemption—Pemiscot Cnty. Port Auth.*, FD 35685, slip op. at 3 (STB served Jan. 8, 2013). Although 49 C.F.R. § 1104.13(c) provides that “[a] reply to a reply is not permitted,” the Board frequently allows the filing such a reply for good cause or to ensure the Board bases its decision on a more complete record. *See, e.g., Ulster & Del. Ry. Revitalization Corp.—Pet. for Declaratory Order*, FD 36164, slip op. at 4 (STB served June 29, 2018); *Application of the Nat’l Passenger R.R. Corp. Under 49 U.S.C. § 24308(a)—Can. Nat’l Ry. Co.*,

FD 35743, slip op. at 1 n.2 (STB served Oct. 7, 2015); *Rail Switching Servs., Inc.—Operation Exemption—Pemiscot Cnty. Port Auth.*, FD 35685, slip op. at 3 (STB served Jan. 8, 2013). The Board waives the provision when adequate justification is provided, and other parties would not be harmed by a delay. *Burlington N. R.R.—Abandonment Exemption—Between Klickitat and Goldendale, Wash.*, AB 6 (Sub-No, 335X), slip op. at 2 (STB served June 8, 2005); *Application of the Nat’l Passenger R.R. Corp. Under 49 U.S.C. § 24308(a)*, FD 35743, slip op. at 1 n.2.

There is ample reason to permit the City to file a Reply to Reading’s Reply. First, the Reply suggests that the City is attempting to “relitigate issues” that were previously decided by the Eastern District of Pennsylvania. Reading is wrong. The City is justified in submitting this Reply to explain why the District Court’s decision does not impact or preclude the Board’s ability to grant the requested declaratory order. The City should have the opportunity to address this red herring. Second, Reading’s Reply makes several misstatements that require correction because they seriously mischaracterize the record in ways that the City could not have anticipated. The Reply therefore requires a response.

Allowing the City to file a Reply to Reading’s Reply will not prejudice Reading. The City is making this filing promptly, observing the 20-day deadline applicable to replies. The City’s filing will not add any complexity to the Board’s review of the matter because the City does not seek to broaden the issues in this proceeding, but instead seeks to correct the record upon which the Board will base its decision by addressing the distractions and misstatements in Reading’s Reply, which the Board must confront.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Board grant this Motion for Leave to File a Reply to the Reply.

Respectfully submitted,

/s/ David Smith

David Smith
Ira Neil Richards
Matthew H. Davis
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500e
Philadelphia, PA 19102
(215) 575-7062
dsmith@dilworthlaw.com
irichards@dilworthlaw.com
mdavis@dilworthlaw.com

Charles A. Spitulnik
Ayelet Hirschhorn
Grant M. Glovin
Kaplan Kirsch LLP
1634 I (Eye) Street, Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com
ahirschhorn@kaplankirsch.com
gglovin@kaplankirsch.com

CERTIFICATE OF SERVICE

I hereby certify that this 21st day of June 2024, I caused a copy of the foregoing Motion for Leave to File a Reply to the Reply to be served upon all parties of record in this proceeding.

Reading International, Inc.
Craig Tompkins
Executive Vice President-General Counsel
5995 Sepulveda Blvd
Suite 300
Culver City, CA 90230
Tel: (213) 235-2240

Kevin Greenberg
GREENBERG TRAURIG, LLP
1717 Arch St
Suite 400
Philadelphia PA 19103
Tel: 215-988-7818
Attorney for Reading International, Inc.

John Voorhees
GREENBERG TRAURIG, LLP
1144 15th Street, Suite 3300
Denver, CO 80202
Tel: 3035726500
Fax: 3035726540
voorheesj@gtlaw.com

Joe Shaneyfelt
GREENBERG TRAURIG, LLP
300 West 6th Street, Suite 2050
Austin, Texas 78701
Ph: (512) 320-7276
Fax: (512) 320-7210
Joe.shaneyfelt@gtlaw.com

Jennifer Bartlett
GREENBERG TRAURIG, LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Ph: (214) 665-3600
Fax: (214) 665-3601
Jennifer.bartlett@gtlaw.com

Sarah McEneaney
1115 Hamilton Street
Philadelphia, PA 19123
callowhill@gmail.com

June 21, 2024



Charles A. Spitulnik