



KAPLAN KIRSCH ROCKWELL

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June 29, 2018

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

Re: *Petition for Leave to File Reply and Reply – Oakland Global Rail Enterprise –
Authority to Operate A Rail Line in Oakland, CA – Petition for Exemption From 49
U.S.C. § 10901, STB Finance Docket No. 36168*

Dear Ms. Brown:

I am attaching on behalf of my client the City of Oakland a Petition for Leave to File a Reply and a Reply to the petition filed in the above-captioned proceedings.

Please do not hesitate to contact me with any questions.

Sincerely,

Charles A. Spitulnik
Counsel for the City of Oakland

cc: Kathryn Kusske Floyd, Esq.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36168

**OAKLAND GLOBAL RAIL ENTERPRISE
– AUTHORITY TO OPERATE A RAIL LINE IN OAKLAND, CA –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901**

**PETITION OF THE CITY OF OAKLAND, CALIFORNIA, FOR LEAVE TO FILE
REPLY**

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document should be addressed to:

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Counsel for City of Oakland, California

Dated: June 29, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36168

**OAKLAND GLOBAL RAIL ENTERPRISE
– AUTHORITY TO OPERATE A RAIL LINE IN OAKLAND, CA –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901**

**PETITION OF THE CITY OF OAKLAND, CALIFORNIA, FOR LEAVE TO FILE
REPLY**

The City of Oakland, California (“City”) respectfully petitions the Surface Transportation Board (“Board”) for leave to file a reply to Oakland Global Rail Enterprise’s (“OGRE”) above referenced petition filed in this proceeding on May 23, 2018 (“OGRE’s Petition”). Good cause exists for granting leave to file a reply, which will not prejudice any party and will provide a more complete record to assist the Board in accurately assessing the petition before it. In anticipation of a favorable response to this Petition, the City is filing its reply simultaneously.

Normally under the Board’s rules, a party must file a reply to a petition within 20 days after the pleading is filed with the Board. 49 C.F.R. 1104.13(a). However, in the past the Board has accepted late-filed replies where the reply will assist in forming a more complete record and where no party will be prejudiced by its inclusion. *See Greenville Cnty. Econ. Dev. Corp. – Petition for Declaratory Order*, STB Finance Docket No. 34487, slip op. at 1 (Service Date July 27, 2005); *Sunflower Rails-Trails Conservancy, Inc. – Petition for Declaratory Order – Sale of*

Railbanked Right-of-Way, STB Finance Docket No. 36034, slip op. at 3 n.5 (Service Date Feb. 23, 2017).

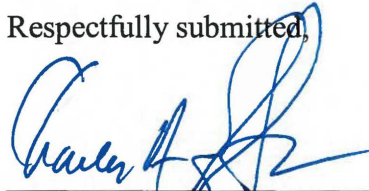
Here, good cause exists to grant the City the opportunity to reply. Pursuant to contractual agreement, OGRE was required to notify the City of any regulatory filings with the STB. The lease between them specifically requires OGRE to cooperate with the City regarding any regulatory approvals that OGRE requires, including meeting and conferring. However, OGRE neither cooperated, nor met, nor conferred, nor provided notice to the City of this filing. OGRE failed to inform the City of OGRE's Petition, which City staff became aware of only very recently, after the period for replies had closed. The City is filing this petition, along with the attached Reply, as quickly as possible upon becoming aware of OGRE's petition.

The City believes that grant of its late-filed reply is absolutely necessary to provide a more complete record and assist the Board in accurately assessing the petition before it. A complete record is necessary here where further investigation and resolution of the regulatory status of the trackage in question is necessary before deciding on OGRE's Petition. Failure to fully investigate and assess the regulatory status of the trackage in question could lead to violation of the Board's processes and undermining of its regulatory mandate.

Finally, no party will be prejudiced by granting the City's late-filed reply. Resolution of the outstanding questions regarding the trackage in question is absolutely necessary in order for OGRE to fully comply with its regulatory obligations, and for the Board to fulfill its regulatory role. Although OGRE has requested that received an expedited decision by June 30, 2018, a slight delay in order to correctly ascertain the regulatory status of the trackage in question will not necessarily require a delay in OGRE's overall schedule for construction.

For the above reasons, the City respectfully petitions the STB to grant it leave to file its reply to OGRE's Petition.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

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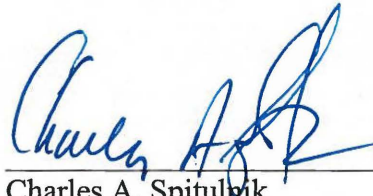
Counsel for City of Oakland, California

Dated: June 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Petition to be served by first class mail, on all parties of record in this proceeding.

Kathryn Kusske Floyd
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Charles A. Spitulnik

Dated: June 29, 2018