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ENTERED
Office of Proceedings
April 9, 2018
Part of
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April 9, 2018

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

Re: Docket No. FD 36178, Metropolitan Council - Petition for Declaratory Order

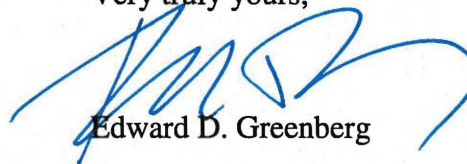
Dear Ms. Brown:

On Wednesday, April 4, 2018, we filed a Petition for Declaratory Order on behalf of the Metropolitan Council in the above-referenced docket. The purpose of this letter is to correct two errors contained on pages 5 and 8 of the Petition. Specifically, the exhibit number for the Consent to LRT referenced on those pages was inadvertently omitted from footnotes 8 and 13.

We are accordingly enclosing corrected pages 5 and 8, and request that the original pages be replaced with the corrected pages.

Please let me know if you have any questions concerning this.

Very truly yours,



Edward D. Greenberg



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utilized its overhead trackage rights on the Kenilworth Corridor for a number of years, it still retains those rights and will continue to hold those rights after the close of this transaction. While HCRRA might have a residual common carrier obligation to provide any local service that might be requested on the Kenilworth Corridor, there has been no such request for common carrier service in the intervening 22 years. Indeed, no rail shippers are located along the Kenilworth Corridor.

This acquisition of the Kenilworth Corridor would be accomplished through the Green Line Extension Light Rail Property Transfer Agreement by and between Hennepin County Regional Railroad Authority and the Metropolitan Council (“PTA”) (Attachment 2) and a Quit Claim Deed (“Deed”). However, HCRRA will retain a permanent, exclusive and irrevocable freight rail easement on and over the Kenilworth Corridor; a copy of that draft HCRRA Freight Rail Operating Easement and Consent to LRT (“Consent to LRT”).⁷ These instruments have been prepared, in part, to ensure that HCRRA would retain an exclusive, permanent and irrevocable freight rail easement to provide common carrier service on and over the Kenilworth Corridor and be able to ensure that TCWR and CP would be able to exercise their trackage rights.⁸ In addition, these documents make it clear that the Council will not unreasonably interfere with or restrict common carrier operations over the Kenilworth Corridor, or the ability of TCWR or CP to operate pursuant to their trackage rights.⁹

B. Bass Lake Spur

The Bass Lake Spur, which is also in Hennepin County, extends from Tower E-14 (milepost 435.06) near Hopkins, MN to milepost 428.38 in St. Louis Park, MN and includes the

⁷ The Deed and Consent to LRT are attachments to and part of the PTA (Attachment 2).

⁸ See Consent to LRT (Exhibit 4 to Attachment 2), Recital C and §2.1.1.

⁹ Id., § 2.2.2.

C. Track Adjustment

Once constructed, the planned extension of the SWLRT will run adjacent to the freight rail on a portion of the Bass Lake Spur and the entire Kenilworth Corridor right-of-way. The planned construction of the SWLRT Project includes the adjustment of portions of the freight rail track on the Kenilworth Corridor and Bass Lake Spur, including replacement of the north half of the Connecting Track with a replacement connection to CP's MN&S Spur via new track called the Southerly Connector.¹³ Those adjustments will take place after closing of these transactions, and at its greatest extent will result in adjusting the freight trackage by no more than 48 feet from its present location. The adjustment will not, however, alter the milepost designations that were identified in the proceedings before the Interstate Commerce Commission by which HCRRA and CP, respectively, were authorized to operate over the Kenilworth Corridor and the Bass Lake Spur. Board approval for the minor planned track adjustment will not be required since it will not extend the territory or markets that HCRRA, CP, or TCWR serve. *See Tex. & Pac. Ry. v. Gulf, Colo. & Santa Fe Ry.*, 270 U.S. 266, 278 (1925); *BNSF Ry. – Petition for Declaratory Order*, Docket No. FD 35164, (served May 20, 2009) (slip op. at 8); *Denver & R.G.W.R. Co. – Jt. Proj. – Relocation Over BN*, 4 I.C.C. 2d 95, 97 (1987).

Applying the *State of Maine* case law discussed in the following section to the material facts of this transaction, the Council is requesting assurance from the Board that this transaction does not require STB approval and does not confer common carrier status upon the Council.

¹³ The freight operating easements that HCRRA is retaining on the Kenilworth Corridor and is acquiring on the Bass Lake Spur contemplate and authorize this adjustment of portions of the track and the subsequent revision of the freight rail easements to reflect the adjustments to the easement areas. *See* HCRRA Consent to LRT, § 2.2.3 (Exhibit 4 to Attachment 2); Easement Agreement, §7.3 (Attachment 3 and its Exhibit C).