

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
July 16, 2018
Part of
Public Record

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**

PETITIONER'S MOTION TO FILE RESPONSE TO REPLY

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Dated: July 16, 2018

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**PETITIONER’S MOTION FOR LEAVE TO FILE
RESPONSE TO REPLY**

Oakland Global Rail Enterprise (“OGRE”) respectfully moves for leave to file the attached Response to the reply submitted by the City of Oakland (“City”) in response to OGRE’s Petition for Declaratory Order.

The Board will permit a reply to a reply for “good cause.”¹ OGRE has good cause to file such a response in this case. The City’s reply raises a question regarding the historical regulatory status of the rail right of way at issue in OGRE’s Petition. The Board should grant OGRE leave to file the attached Response so that OGRE has an opportunity to address the issues raised by the City and to provide the Board with a more complete record. The attached Response does not raise any new arguments in

¹ Although 49 C.F.R. § 1104.13(c) indicates that “[a] reply to a reply is not permitted,” the Board has frequently waived that provision for good cause. *See, e.g., Sierra R.R. Co. v. Sacramento Valley R.R. Co., LLC*, STB Docket No. NOR 42133, at 1, n.1 (served Mar. 9, 2012); *Cross Oil Ref & Mktg., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 33582, at 1 (served Oct. 27 1998). *See generally* 49 C.F.R. § 1100.3 (“The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.”).

support of the Petition for Declaratory Order, but instead presents information that will aid the Board in its decision-making process.

First, the Response should be allowed because it responds to the City's claim about the regulatory status of the rail line OGRE intends to rehabilitate. Specifically, the City highlights limited information and suggests that it is "possible" the track was historically used as private track. Publicly available historical information, as well as subsequent use of the track, suggests otherwise and demonstrates the track falls within the Board's jurisdiction.

Second, given the ongoing and pervasive industrial use of the area in question, OGRE could not have reasonably anticipated the City's response. In circumstances where a movant could not have anticipated the arguments and claims of a respondent that could be central to the resolution of a case, the Board has found good cause for leave to file a reply.²

Finally, affording OGRE an opportunity to respond will provide the Board with a more complete record without material delay.³ A fuller, more complete record will facilitate the Board's decision-making process as it addresses the Petition for Declaratory Order.⁴

² See, e.g., *Delaware & Hudson Ry. Co. v. Consol. Rail Corp.—Reciprocal Switching Agreement*, 9 I.C.C. 2d 989, 990 (1993) (finding good cause for a reply to a reply where a party "asserts that it could not have anticipated the arguments set out" in the reply when it filed its petition and the issue "is central to the resolution of this proceeding").

³ The attached Response is being filed 17 days after the City's reply to OGRE's Petition for Declaratory Order.

⁴ See *Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Petition for Exemption—Passenger Rail Line Between Dallas and Houston, Tex.*, FD 36025 at 3 n. 5 (July 18, 2016) (allowing a reply to a reply "in the interest of

CONCLUSION

For the forgoing reasons, OGRE respectfully requests that the Board grant this Motion for Leave to File a Response to Reply.

Respectfully submitted,


Kathryn Kusske Floyd
Margaret K. Fawal

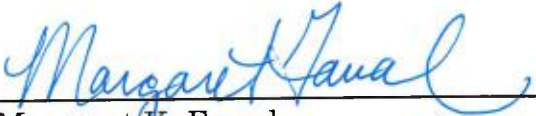
Counsel to Oakland Global Rail Enterprise

Dated: July 16, 2018

compiling a more complete record.”); *Tongue River R.R. Co., Inc.—Construction & Operation—Western Alignment*, FD 30186 (Sub-No. 3), at 4 (served June 15, 2011) (“In the interest of compiling a more complete record in this case, we will accept into the record the surreplies.”); *Union Pac. R.R. Co.—Abandonment—In Lancaster & Gage Ctys., NE, and Marshall Cnty., KS*, AB-33 (Sub-No. 140), at 1 (served Dec. 22, 1999) (replies accepted “where they will contribute to a complete record without prejudicing any party or delaying the proceeding”); *City of Alexandria, Va.—Pet. for Declaratory Order*, FD 35157, slip op. at 2 (served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July 2018, I caused a copy of the foregoing Motion for Leave to File Response to Reply to be served on all parties of record electronically, by courier, or by first class mail, postage prepaid.


Margaret K. Fawal