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SERVICE DATE – JUNE 20, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36168¹

OAKLAND GLOBAL RAIL ENTERPRISE—PETITION FOR DECLARATORY ORDER

Docket No. FD 36301

OAKLAND GLOBAL RAIL ENTERPRISE, LLC—ACQUISITION EXEMPTION—RAIL
LINE IN ALAMEDA COUNTY, CAL.

Docket No. FD 36302

OAKLAND BULK & OVERSIZE TERMINAL, LLC—ACQUISITION EXEMPTION—RAIL
LINE IN ALMEDA COUNTY, CAL.

Docket No. FD 36303

CITY OF OAKLAND, CAL.—ACQUISITION EXEMPTION—FORMER OAKLAND ARMY
BASE, ALAMEDA COUNTY, CAL.

Digest:² This decision denies a petition for reconsideration, and denies as moot a petition for stay, filed by the City of Oakland.

Decided: June 19, 2019

The City of Oakland, Cal. (the City), has filed a petition for reconsideration of the Board's decision in Oakland Global Rail Enterprise—Petition for Declaratory Order (March 15 Decision), FD 36168 (STB served Mar. 15, 2019), as well as a petition to stay that decision pending reconsideration. For the reasons stated below, the Board will deny the petition for reconsideration and deny as moot the petition for stay.

¹ These proceedings are not consolidated. A single decision is being issued for administrative purposes.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

On May 23, 2018, Oakland Global Rail Enterprise, LLC (OGRE), a non-carrier, filed a petition for a declaratory order asking the Board to find that OGRE does not need Board construction authority under 49 U.S.C. § 10901 to rehabilitate or replace 22,202 feet of track within an existing right-of-way at the former Oakland Army Base (the Base) in Oakland, Cal. According to OGRE, the U.S. Army used the Base as a cargo port and warehousing center until it was closed in 1995. Before the Base was closed, and for a short time thereafter, Oakland Terminal Railway operated over the rail line serving the Base. (OGRE Pet. 2.) OGRE further states that the Port of Oakland (the Port) and the City are redeveloping the Base and that, as part of this redevelopment, Oakland Bulk and Oversized Terminal (OBOT), an affiliate of OGRE, has leased from the City a portion of the Base that includes a portion of the existing railroad right-of-way. (*Id.*) OGRE states that it intends to rehabilitate track on that right-of-way, which it has subleased from OBOT, and that it would use this track to provide service to shippers that may locate at the Base. (*Id.* at 3.)

The March 15 Decision concluded that no Board authority is required to rehabilitate or replace certain portions of the track identified by OGRE's petition. March 15 Decision, FD 36168, slip op. at 1, 6-7. Specifically, the Board found that certain track, which the Board referred to as the "Middle Segment," was previously authorized by the Interstate Commerce Commission (ICC) to be acquired and operated as jurisdictional track in Oakland Terminal Railroad Co. Purchase, Etc., FD 14115 et al. (ICC decided May 26, 1943), and, as it has not been abandoned, remains as main line track subject to the Board's jurisdiction. March 15 Decision, FD 36168, slip op. at 6. As the Board explained, existing jurisdictional track may be rehabilitated or replaced without Board authority. *Id.* (citing Jersey Marine Rail, LLC—Pet. for Declaratory Order, FD 36063, slip op. at 5 (STB served Jan. 31, 2017); Mo. Cent. R.R.—Acquis. & Operation Exemption—Lines of Union Pac. R.R., FD 33508 et al., slip op. at 8 (STB served Sept. 14, 1999)). The Board also found that the record evidence did not demonstrate that certain track to the west of the Middle Segment, which the Board referred to as the "West Segment," was previously jurisdictional track.³ March 15 Decision, FD 36168, slip op. at 7. However, the Board concluded that, based on the record, the West Segment would be considered spur track. *Id.* at 9. The Board explained that, because spur track is excepted from Board regulation under 49 U.S.C. § 10906, no authority would be required to construct track on the West Segment. *Id.*⁴ Additionally, the Board noted that there appeared to have been three acquisitions requiring Board authority for which no authority had been sought or granted: (1) the City's acquisition of a section of the rail line authorized for acquisition and operation in Oakland Terminal Railroad Co. Purchase, Etc., FD 14115 et al. (ICC decided May 26, 1943); (2) OBOT's acquisition of that section of rail line from the City by lease; and (3) OGRE's acquisition of that section of rail line

³ For purposes of this decision, the Middle Segment and the West Segment combined will be referred to as "the Line."

⁴ In the March 15 Decision, the Board declined to determine whether the rehabilitation of certain track to the east of the Middle Segment (the "East Segment") would require Board authority because it was not clear whether OGRE was asking the Board for such a determination. *Id.* at 10.

from OBOT via a sublease. Id. at 10. Accordingly, the Board directed the City, OBOT, and OGRE to seek authority under 49 U.S.C. § 10901 or to explain why such authority is not required.⁵ Id.

On March 25, 2019, the City filed a petition to stay the March 15 Decision pending anticipated reconsideration,⁶ and it filed its petition for reconsideration on April 4, 2019. The City asserts that on October 23, 2018, the City served OBOT with a notice of default regarding OBOT's lease (the Lease) and that pursuant to the terms of the Lease, the notice of default automatically terminated the Lease effective November 23, 2018. (City Pet. for Recons. 2-3.) The City explains that, on December 4, 2018, OBOT and OGRE filed a complaint in state court against the City for, among other things, breach of contract and intentional interference with contract in relation to the Lease. (Id. at 3.) According to the City, that litigation was ongoing at the time it filed the petition for reconsideration. (Id.)

The City argues in its petition for reconsideration that the City's termination of the Lease and OGRE's corresponding sublease "is new evidence constituting changed circumstances" demonstrating that OGRE now lacks the property rights necessary to operate the Line, and the Board therefore should not provide OGRE with a jurisdictional determination that may allow it to thwart or preempt local regulation or that would intrude into the domain of state property law and contractual rights. (City Pet. for Recons. 1, 5-11.) The City also argues that the Board materially erred when it made a jurisdictional determination where there is no carrier seeking to operate. (Id. at 1, 12-13.) According to the City, such a determination helps establish the non-carrier tenant's right to use the property and to invoke federal preemption in state property and contract disputes with the landlord. (Id.) The City further argues that the Board materially erred in its determination regarding the West Segment because that determination was too speculative and failed to sufficiently consider the history of the West Segment. (Id. 13-15.) Finally, the City argues that the Board should reconsider the March 15 Decision in light of the impact on the public interest and "significant precedential implications." (Id. at 15-16.)

OGRE replied in opposition to the petition for stay on April 1, 2019, and to the petition for reconsideration on April 17, 2019. OGRE argues in its reply to the City's petition for reconsideration that the purported lease termination is not new evidence or changed circumstances under the Board's regulations. OGRE also argues that the purported lease termination does not materially affect the March 15 Decision because OGRE's property rights

⁵ Verified notices of exemption were separately filed by the City, OBOT, and OGRE on May 14, 2019 in Docket Nos. FD 36303, FD 36302, and FD 36301, respectively. The effective dates of those verified notices have been postponed until further order of the Board. Oakland Glob. Rail Enter., LLC—Acquis. Exemption—Rail Line in Alameda Cty., Cal., FD 36301 et al. (STB served May 30, 2019). On June 6, 2019, the City filed a petition to reject or revoke the verified notices filed by OBOT and OGRE. The Board will address this petition in a subsequent decision.

⁶ The Board will not discuss the City's petition for stay in detail because the arguments raised there are repeated in the petition for reconsideration and those arguments are addressed in this decision.

were not relevant to that decision. Finally OGRE contends that the City’s arguments regarding material error fail because they ignore OGRE’s statements that it intends to file for operating authority at the appropriate time, because a property rights dispute does not prevent the Board from exercising its jurisdiction, and because the March 15 Decision does not allow OGRE to inappropriately assert preemption. (OGRE Reply 2-6, Apr. 17, 2019.)

DISCUSSION AND CONCLUSIONS

A party may seek reconsideration of a Board decision by submitting a timely petition that (1) presents new evidence or substantially changed circumstances that would materially affect the prior decision; or (2) demonstrates material error in the prior decision. 49 U.S.C. § 1322(c); 49 C.F.R. § 1115.3. A petition for reconsideration may not be based on “new argument that could have and should have been presented in the earlier stages of the proceeding.” Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 24 n.29 (STB served Aug. 2, 2018) (citing Tex. Mun. Power Agency v. Burlington N. & Santa Fe Ry., 7 S.T.B. 803, 804 (2004)). “Nothing in the statute or the Board’s regulations obliges the agency to rethink its decisions whenever a party wishes to try out a new theory or finds new information at a late stage in the process.” Tex. Mun. Power Agency, 7 S.T.B. at 805 (citing Conn. Trust for Historic Pres. v. ICC, 841 F.2d 479, 484 (2d Cir. 1988)). See also New Eng. Cent. R.R.—Trackage Rights Order—Pan Am S. LLC, FD 35842, slip op. at 5 (STB served Apr. 26, 2018) (“[T]he cases establishing that the Board will not consider arguments or evidence that should have been submitted at an earlier stage . . . apply to any materials that could and should have been presented prior to reconsideration, regardless of whether the petitioner alleges new evidence, changed circumstances, or material error.”) Moreover, no matter which type of reconsideration claim is presented (new evidence, changed circumstances, or material error), the alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected in order for reconsideration to be granted. See Montezuma Grain Co. v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); Can. Nat’l Ry.—Control—EJ&E West Co., FD 35087 (Sub-No. 8), slip op. at 4 (STB served Dec. 21, 2018); 49 C.F.R. § 1115.3.

Here, the City has not shown that reconsideration is justified by new evidence, changed circumstances, or material error. The termination of the Lease does not constitute new evidence or changed circumstances because the City could have raised that issue earlier. Further, OGRE’s lack of operating authority and alleged lack of property rights are not relevant to the issues resolved by the March 15 Decision, and the decision did not permit OGRE to conduct any activity on City property. Rather, it merely clarified the jurisdictional status of the Line. Moreover, the Board’s determination with respect to the West Segment sufficiently considered relevant evidence and was not in error.

The Termination of the Lease Does Not Constitute New Evidence or Changed Circumstances

According to the City, the notice of default automatically terminated the Lease effective November 23, 2018. The March 15 Decision was not issued until nearly four months later. Relying on Wisconsin & Southern Railroad—Acquisition Exemption—Iowa, Chicago & Eastern Railroad, FD 34464 (STB served July 30, 2004), the City claims that “the Board has accepted petitions for reconsideration based on new evidence or changed circumstances that occur

between the period when the parties complete their final submissions before the Board and when the Board issues a decision in the matter.” (City Pet. for Recons. 6.) However, in that case, the petitioner established why the evidence could not have been presented before the Board’s initial decision. Wis. & S. R.R., FD 34464, slip op. at 2. n.2. The City, in contrast, has not shown that it could not have alerted the Board to the termination of the Lease prior to the March 15 Decision. Accordingly, the City’s reliance on Wisconsin & Southern is misplaced. Because the City had months to supplement the record with information regarding termination of the Lease prior to the March 15 Decision but failed to do so, the termination does not constitute new evidence or changed circumstances under 49 C.F.R. § 1115.3.⁷ See Town of Babylon—Pet. for Declaratory Order, FD 35057, slip op. at 4 (STB served Sept. 26, 2008). However, the Board will nonetheless address the merits of the City’s arguments below.

OGRE’s Lack of Operating Authority and Property Rights Do Not Provide a Basis for Reconsideration

The City asserts that it is inappropriate for the Board to make jurisdictional determinations where a non-carrier is not in a position to initiate rail service but “is merely seeking to wield the Board’s jurisdiction to ward off legitimate local regulation with the threat of preemption.” (City Pet. for Recons. 8.) The City states that “where a petitioner has neither Board authority nor the property rights necessary to provide transportation on a line, the Board has avoided making determinations that intrude into the domain of state law property and contractual rights.” (*Id.* at 9.) The City argues that the termination of OGRE’s sublease deprives OGRE of the property rights necessary to operate the Line, and the termination therefore constitutes changed circumstances warranting reconsideration. (*Id.* at 11.)

The City also presents a very similar argument framed in terms of material error. The City claims that the Board avoids making jurisdictional determinations that would provide a non-carrier tenant “a basis for asserting federal preemption where the tenant is in no position to avail itself of such preemption.” (*Id.* at 12.) The City asserts that because OGRE is a non-carrier tenant that is not in a position to operate the Line, it was material error for the Board to provide a jurisdictional determination that would allow OGRE to assert federal preemption regarding any effort by the City to restrict rehabilitation activities on City property. (*Id.* at 12-13.)

Whether framed in terms of changed circumstances or material error, the City’s argument is flawed on two counts. First, the City misunderstands the March 15 Decision—it did not “intrude into the domain of state law property and contractual rights,” “decide . . . what OGRE

⁷ In its reply to the petition for stay, OGRE claims that under California law, a tenant’s right to possess the property remains in effect until there is a judicial determination that the lease has been terminated. (OGRE Reply 3-4, Apr. 1, 2019.) Accordingly, OGRE asserts that because the litigation with respect to the termination of the Lease remains ongoing, OBOT, and in turn OGRE, retain the right to use and possess the leasehold. (*Id.*) Thus, it is not clear that the status of OGRE’s property rights has even changed. As explained further below, even if OGRE no longer possesses the property rights necessary to conduct any activities on City property, OGRE’s lack of property rights would not warrant reconsideration of the March 15 Decision.

may or may not do on the City’s property,” provide a basis for OGRE to argue that “the preemption of state law that comes with the Board’s assertion of jurisdiction limits the City’s ability to restrict [OGRE’s rehabilitation activities],” or provide “OGRE with a basis for flouting the City’s state property rights.” (City Pet. for Recons. 9, 10, 13, 15 (citation omitted).) The Board’s jurisdictional determination did not provide OGRE with authority to use City property; it simply clarifies that the Line remains within the Board’s jurisdiction and OGRE, or any other entity, would not be required to seek Board authority to rehabilitate or replace the track at issue. OGRE would still need the requisite property rights before engaging in any rail-related activity on City property.⁸ Thus, the central premise of the City’s argument—that the March 15 Decision preempts state law such that OGRE may engage in rail rehabilitation activities on City property even absent a right to do so under state law in—is incorrect. Indeed, OGRE acknowledges that the Board’s March 15 Decision does not provide it with a basis to assert federal preemption where it otherwise would not apply. (OGRE Reply 6, Apr. 17, 2019.)

Second, the City misinterprets Board precedent. Contrary to the City’s interpretation, the Board need not refrain from resolving jurisdictional issues raised by petitioners that lack operating authority or the property rights necessary to provide rail service over the line at issue. The Board routinely addresses jurisdictional issues in response to petitions for declaratory order from non-carriers lacking property rights to operate the line in question. See, e.g., NewVista Prop. Holdings, LLC—Pet. for Declaratory Order, FD 36040 (STB served Mar. 17, 2017) (granting declaratory order sought by an adjacent landowner, a non-carrier, determining the jurisdictional status of portions of a rail line). Thus, even if OGRE lacks any state law property interest in the tracks, the Board may exercise its authority to address the jurisdictional status of the track.⁹

The cases the City cites to support its position are inapposite. In Riffin—Petition for Declaratory Order, FD 35245, slip op. at 6 (STB served Sept. 15, 2009), the Board explained that although the petitioner had obtained operating authority, he could not be considered a “rail

⁸ Cf. Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984, slip op. at 3 (STB served Apr. 1, 2016) (“[T]he Board’s grant of authority to operate under a notice of exemption is permissive only, and in order to exercise that authority and commence operations, the carrier must still obtain the necessary rights under state property and/or contract law.”); Iowa, Chi. & E. R.R.—Acquis. & Operation Exemption—Lines of I&M Rail Link, LLC, FD 34177, slip op. at 15 (STB served July 22, 2002) (“[I]n all of our licensing proceedings, our construction authority is permissive. DME will have to acquire the right-of-way, secure financing, and obtain approvals from certain cooperating agencies before it can construct the new line.”); Star Lake R.R.—Rail Constr. & Operation in McKinley Cty., N.M., FD 28272, slip op. at 5 (ICC served Apr. 20, 1987) (declining to revoke a grant of construction authority on the basis that an easement needed to construct the line was terminated and stating that “authorization is permissive; applicants will have to obtain the easement or make some other acceptable arrangement before they can construct the line.”)

⁹ Because the March 15 Decision does not depart from Board precedent, the City’s concerns about the decision’s “significant precedential implications,” (City Pet. for Recons. 15), are without basis.

carrier” because he did not possess the property interests necessary to operate the rail line. OGRE does not seek a declaration that it is a rail carrier and thus the Board’s determination in Riffin—that an entity is not a “rail carrier” absent the property interests necessary to provide rail transportation—is not relevant to the March 15 Decision. The City also suggests that in Tri-State Brick & Stone of New York, Inc.—Petition for Declaratory Order, FD 34824 (STB served Aug. 11, 2006), the Board declined to make a jurisdictional determination to prevent a non-carrier tenant from asserting preemption with respect to a landlord’s restriction of the tenant’s activities. (City Pet. for Recons. 12.) In that case, however, the Board determined that a tenant’s transloading operations did not qualify as “transportation by rail carrier” subject to the Board’s jurisdiction and that a landlord’s restriction of those operations was therefore not preempted. Tri-State Brick, FD 34824, slip op. at 6. The Board thus exercised its authority to resolve a jurisdictional question with respect to a non-carrier involved in a dispute with its landlord, as in the present case.

The City also argues that in Jersey Marine Rail, LLC—Petition for Declaratory Order, FD 36063 (STB served Jan. 31, 2017), the Board exercised its authority to determine that a non-carrier could rehabilitate a jurisdictional line without Board authority based in part on the understanding that the non-carrier’s activities would be conducted on property for which it possessed the requisite property rights. (City Pet. for Recons. 8-9.) There, however, the Board did not rely on the petitioner’s property rights as a prerequisite to its determination with respect to the proposed rehabilitation activities.¹⁰ And although the City quotes a statement from Port Authority of New York & New Jersey—Petition for Declaratory Order, FD 34428 (STB served Jan. 21, 2004) explaining that an entity with the right to operate over existing connecting rail lines could build proposed new connecting lines without Board authority, that statement was merely an application of the well-established legal principle that a carrier does not require Board authority to construct additional tracks that do not enable it to enter new markets or invade new territory. The statement does not suggest that the Board will clarify jurisdictional issues only where a petitioner possesses the operating authority and property rights necessary to provide rail service.¹¹

¹⁰ The Board in that case did explain that the petitioner would not need to obtain property outside its leasehold. Jersey Marine, FD 36063, slip op. at 5. However, it did so in response to concerns raised by Consolidated Rail Corporation (Conrail) claiming that it was not clear if the petitioner intended to acquire and operate a particular track segment outside its leasehold that could interfere with Conrail’s operations. Id.; Conrail Comment 2-3, Jersey Marine, FD 36063. Thus, the Board’s comments regarding the petitioner’s activities taking place within its leasehold were simply meant to clarify the scope of proposed rail operations.

¹¹ The City cites additional cases for the proposition that the Board will “weigh in on jurisdictional and regulatory matters brought by would-be carriers or property owners in anticipation of those non-carriers’ commencement of common carrier rail service.” (City Pet. for Recons. 8.) Those cases, however, do not hold that the Board may address such issues *only* in those circumstances.

Finally, the City attempts to distinguish certain Board precedent cited in the March 15 Decision on the ground that the parties in those cases were seeking to obtain or maintain operating authority while OGRE is doing neither. (City Pet. for Recons. 10.) However, this distinction is not meaningful. The cited cases support the proposition that the Board may act with respect to a rail line at the request of a party that does not possess the property rights in the line. Moreover, the City fails to recognize that OGRE stated that it does, in fact, intend to seek operating authority. (OGRE Reply 5, Apr. 17, 2019.) It was appropriate for OGRE to seek a declaratory order prior to seeking Board authority because the type of authority it would require depended upon resolution of the jurisdictional issues. (See OGRE Pet. 1.) A party may use a declaratory order to resolve such jurisdictional uncertainty before requesting authority. See, e.g., Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill., 2 S.T.B. 606, 608 (1997).

The Board Did Not Materially Err in Its Determination Regarding the West Segment

The City argues, without citing authority, that the Board erred by determining the jurisdictional status of the West Segment because “[d]etermining jurisdiction over a trackage that is unbuilt, in right-of-way [that] may never have been subject to Board jurisdiction, on land that is owned by another entity, at the request of a non-carrier, is too speculative and moves beyond what the Board should be prepared to consider.” (City Pet. for Recons. 15.) To the contrary, however, the factors listed by the City need not prevent, and have not prevented, the Board from resolving jurisdictional or regulatory questions, and it was appropriate to do so in this proceeding. See, e.g., Ind. R.R.—Pet. for Declaratory Order, FD 35181, slip op. at 2 (STB served Apr. 15, 2009) (concluding that a proposed track, the construction of which would require the acquisition of additional property, would be spur track); Tongue River R.R.—Constr. & Operation—W. Alignment, FD 30186 (Sub-No. 3), slip op. at 16 n.50 (STB served Oct. 9, 2007) (granting construction authority to a non-carrier that had yet to acquire the property necessary to construct the line).

The City further argues that, even if it were appropriate to determine the jurisdictional status of the West Segment, the Board misapplied its own test for doing so because it failed to consider the history of the West Segment or “explain why the lack of historical basis for asserting jurisdiction over the West Segment did not overcome other factors to which the Board gave credence.” (City Pet. for Recons. 13-14.)

To the contrary, however, the Board did address the history of the West Segment, to the extent it was reflected in the record. The Board explained that OGRE claimed that the record evidence indicated the West Segment was historically jurisdictional track while the City claimed there is evidence indicating that the West Segment was historically private track. March 15 Decision, FD 36168, slip op. at 7. The Board concluded that the record evidence did not establish that the track was jurisdictional but also stated that it was not necessary to determine the track’s historical jurisdictional status. Id. The Board determined that the planned West Segment, if used as OGRE proposed, would be excepted track (under § 10906) rather than track subject to the Board’s licensing authority under § 10901. In that context, a definitive determination regarding the historical status of the West Segment would not have changed the Board’s decision. Indeed, there is no legal authority dictating that historical use as private track,

in and of itself, controls the status of that track when it is proposed to be used to provide common carrier service. Thus, a definitive determination that the West Segment was historically used as private track, as suggested by the City, would not materially affect the Board's March 15 Decision. See Montezuma Grain, 339 F.3d at 541-42.

Clarification Related to Docket No. FD 36303

Although reconsideration regarding the status of the West Segment is not warranted, the Board will clarify the applicability of the March 15 Decision to the West Segment. As noted above, in the March 15 Decision, the Board ordered OGRE, OBOT, and the City to seek acquisition authority, or explain why such authority was not necessary, for the portion of the track that the Board found to be subject to the licensing requirements of 49 U.S.C. § 10901 (i.e., for the Middle Segment). March 15 Decision, FD 36168, slip op. at 10. The Middle Segment was the only portion of the track at issue that the Board found to be subject to § 10901 in the March 15 Decision. Therefore, pursuant to that decision, the Board's directive for the parties to seek acquisition authority, or explain why such authority was not necessary, applied only to the Middle Segment. However, in its verified notice of exemption filed on May 14, 2019, the City sought authority to acquire not just the Middle Segment, but rather all of the 22,202 feet of track identified by OGRE in its petition. (City Verified Notice of Exemption 1, May 14, 2019, City of Oakland, Cal.—Acquis. Exemption—Oakland Army Base, Alameda, Cal., FD 36303.) Based on the record in Docket No. FD 36168, this 22,202 feet of track includes the West Segment.¹² See March 15 Decision, FD 36168, slip op. at 1, 9 n.9. As noted above, the Board has determined that the record evidence does not establish that the West Segment was previously jurisdictional track. If used as OGRE proposed, the West Segment would be excepted track under 49 U.S.C. § 10906, which is not subject to the Board's licensing authority. See 49 U.S.C. § 10906. Accordingly, the City will be directed to amend its May 14, 2019 notice of exemption to seek authority to acquire only the Middle Segment by July 5, 2019.

The verified notices of exemption filed by OBOT and OGRE on May 14, 2019, seek acquisition authority only for the Middle Segment. (OGRE Verified Notice of Exemption 1, May 14, 2019, Oakland Glob. Rail Enter., LLC—Acquis. Exemption—Rail Line in Alameda Cty., Cal., FD 36301; OBOT Verified Notice of Exemption 1, May 14, 2019, Oakland Bulk & Oversize Terminal, LLC—Acquis. Exemption—Rail Line in Alameda Cty., Cal., FD 36302.) Those two notices are therefore consistent with the March 15 Decision as to the extent of the track for which authority must be sought. However, as noted above, the effective dates of those two notices and the notice filed by the City have been postponed until further order of the Board.

For the reasons discussed above, the petition for reconsideration will be denied. Because the petition for reconsideration is being denied, the stay petition will be denied as moot.

¹² The 22,202 feet of track might also include all or part of the East Segment. As the Board noted in the March 15 Decision, it is not clear if OGRE's petition for declaratory order encompassed the East Segment, and therefore, the Board did not address that segment. March 15 Decision, FD 36168, slip op. at 1 n.2, 10.

It is ordered:

1. The petition for reconsideration is denied.
2. The petition for stay is denied as moot.
3. The City is directed to amend its verified notice of exemption in Docket No. FD 36303 by July 5, 2019.
4. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.