

March 12, 2020

VIA EMAIL

Kathryn K. Floyd

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Ms. Victoria Rutson
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 36312 – Oakland Global Rail Enterprise – Authority to
Operate a Rail Line in Oakland, CA

Dear Ms. Rutson:

As you know, Oakland Global Rail Enterprise, LLC (OGRE) intends to request authority from the Surface Transportation Board (STB or Board) to operate over existing and rehabilitated rail lines located at the former Oakland Army Base (OAB) in Oakland, California. The real property upon which OGRE intends to operate the rail line is owned by the City of Oakland (City), leased to OGRE's affiliate, Oakland Bulk and Oversized Terminal (OBOT), and subleased to OGRE. On February 11, 2020, the City sent a letter to the STB's Office of Environmental Analysis (OEA) asserting that it is "premature" and "not possible" for OEA to evaluate the environmental impacts of OGRE's proposal in light of ongoing contractual disputes and state court litigation between OGRE and the City. But the Board has already considered and properly rejected the City's arguments.

In March 2019, the Board issued a decision finding that OGRE does not need STB construction authority under 49 U.S.C. § 10901 to rehabilitate and replace certain portions of track within an existing right-of-way at the OAB. In that proceeding, the Board rejected the City's request to withhold relief because of the underlying property dispute between OGRE, OBOT, and the City. The Board noted that "because a grant of operating authority is permissive, the lack of the necessary contractual and property rights would not necessarily foreclose a grant of operating

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authority.”¹ As the Board explained, “if [it] were to grant operating authority in the future, OGRE would need to obtain the necessary property or contract rights in order to exercise that authority.”²

On April 4, 2019, the City filed a petition for reconsideration of the STB’s March 2019 decision. In its petition, the City asserted that reconsideration was necessary in light of the City’s unsuccessful attempt to terminate its lease agreement with OBOT and ongoing litigation between the City and OGRE regarding contractual and property rights disputes. The STB rejected the City’s petition for reconsideration, explaining that the ongoing litigation was not relevant to the Board’s decision. The Board reiterated that its March 15, 2019 decision “did not provide OGRE with authority to use City property” but rather, “simply clarifie[d] that the Line remains within the Board’s jurisdiction”³ Once again, the Board noted that, regardless of its decision to exercise its jurisdiction, OGRE “would still need the requisite property rights before engaging in any rail-related activity on City property.”⁴ Therefore, the Board properly concluded that any contractual dispute between OGRE and the City was irrelevant to its decision.

The pertinent circumstances have not changed since the Board rejected the City’s petition for reconsideration in June 2019. OGRE continues to lease the property at issue, the City has not successfully obtained an unlawful detainer to terminate the lease, and litigation between the parties is ongoing. Now, as in June, these circumstances do not prevent the Board from exercising its jurisdiction and moving forward with its analysis of OGRE’s proposal.⁵ Nor is there any other reason the Board should put its environmental analysis on hold until the ongoing contractual dispute is resolved. The City of Oakland’s letter is yet another attempt to delay OGRE’s proposed project. OGRE respectfully requests that OEA not delay its environmental analysis of OGRE’s proposal. Please do not hesitate to contact me if you have any questions.

¹ Oakland Global Rail Enterprise—Petition for Declaratory Order, STB Docket No. FD 36168 at 11 (served Mar. 15, 2019).

² *Id.*

³ Oakland Global Rail Enterprise—Petition for Declaratory Order, STB Docket No. FD 36168 at 6 (served June 20, 2019).

⁴ *Id.*

⁵ It is ultimately up to the court, not the Board, to resolve the contractual and property rights disputes between the City and OGRE. See, e.g., *City of Alameda—Acquisition Exemption—Alameda Beltline R.R.*, STB Docket No. FD 34798 (served Apr. 3, 2006) (“[T]he Board does not generally resolve contract disputes.”). And because OGRE is only requesting permissive authority, the Board need not wait for a resolution of the contractual dispute in order to move forward. *Grand Elk R.R., Inc.—Acquisition of Incidental Trackage Rights Exemption—Norfolk Southern Ry. Co.*, STB Docket No. FD 35197 (Sub-No. 1) (served Nov. 1, 2016) (“The Board does not typically resolve contract disputes” and such disputes “need not be resolved before the Board’s permissive authority is allowed to take effect.”).

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Sincerely,

A handwritten signature in cursive script, reading "Kathryn K. Floyd".

Kathryn K. Floyd

cc: Dave Navecky
Skyler Sanders
Gabriel Ignacio