



KAPLAN KIRSCH ROCKWELL

July 11, 2008

E-filing

Hon. Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**Re: Petition of the City of Alexandria, Virginia, for Declaratory Order
Finance Docket No. 35157**

Dear Ms. Quinlan:

I am enclosing the following documents for filing in the above-captioned proceeding:

1. Petition of the City of Alexandria, Virginia, for Leave to File a Reply to a Reply;
and
2. Reply of the City of Alexandria, Virginia, to Norfolk Southern's Response to
Petition for Declaratory Order and Motion to Strike Extraneous Material

The City of Alexandria asks the Board to consider the Motion to Strike regardless of how it rules on the Petition for Leave to File a Reply to a Reply.

Thank you for your attention to this matter.

Sincerely,

W. Eric Pilsk

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket Number 35157

**PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER**

**PETITION OF
THE CITY OF ALEXANDRIA, VIRGINIA
FOR LEAVE TO FILE A REPLY TO A REPLY**

Communications with respect to this
document should be addressed to:

Dated: July 11, 2008

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ATTORNEYS FOR THE CITY OF
ALEXANDRIA, VIRGINIA

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket Number 35157

**PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER**

**PETITION OF
THE CITY OF ALEXANDRIA, VIRGINIA
FOR LEAVE TO FILE A REPLY TO A REPLY**

Pursuant to 49 C.F.R. §1117.1, the City of Alexandria, Virginia (the “City”), by counsel, hereby files this Petition for Leave to File a limited Reply to the Response of Norfolk Southern Railway Company to Petition for Declaratory Order, filed in this proceeding on July 2, 2008 (the “NS Response”). The Reply also includes a Motion to Strike Extraneous Material from the NS Response and the City asks the Board to consider that Motion regardless of how it rules on the Petition for Leave to File a Reply to a Reply.

Although the Board’s rules do not permit the submission of a reply to a reply (49 C.F.R. §1104.13(c)) as a matter of right, good cause exists to permit the City to submit a brief reply to the NS Response. The NS Response contains a number of misleading statements of facts and issues and further attempts to inject extraneous issues into this matter. The City is compelled to respond to those assertions and to strike them in order to correct the record and clarify the proper scope of this proceeding.

For example, the NS Response relies in large part on arguments about the City’s alleged political motives in filing this action and its position on locating an ethanol transloading facility

near residential areas. Those assertions are both false and irrelevant. As Norfolk Southern readily admits, the only issues in this case relate to the relationship between Norfolk Southern and RSI Leasing, Inc. (“RSI”), which operates the ethanol transloading facility at issue, and who controls the transloading operation. Political rhetoric about the City’s purported motives in filing this lawful action is both irrelevant and unwarranted. The City’s Reply responds to those statements to correct the false and misleading impression of the facts and issues the NS Response attempts to create.

Similarly, the NS Response is based on conclusory statements and selected documents to support the notion that Norfolk Southern and not RSI, the occupant of the subject site, operates the transloading facility. The facts of this case, including the agreement between Norfolk Southern and RSI attached to the NS Response, undercut those assertions and demonstrate that further discovery is necessary to resolve this matter. Moreover, a recent tariff issued by Norfolk Southern and incorporated by reference into Norfolk Southern’s agreement with RSI, which Norfolk Southern fails to attach to its Response, further illustrates that RSI controls the transloading operation, not Norfolk Southern. The City’s Reply brings these new facts to the Board’s attention in order to correct Norfolk Southern’s misleading and incomplete statement of the facts and issues.

The City’s Reply does not raise any new legal issues. The only new facts it introduces are facts that Norfolk Southern is aware of but did not disclose to the Board, even though those facts are plainly material to the issues before the Board. Permitting the City to submit a Reply will not prejudice any party because the Board has not yet issued any rulings in this proceeding. Allowing the City to Reply will, however, assist the Board in resolving this matter by correcting the record and clarifying the issues properly before the Board.

WHEREFORE, and in view of all of the foregoing, the City respectfully requests that this Board grant its Petition for Leave to File a Reply to the Response of Norfolk Southern to Petition for Declaratory Order. Further, the City respectfully requests that this Board rule on the City's Motion to Strike Extraneous Material regardless of how it rules on the Petition for Leave to File a Reply to a Reply.

Dated: July 11, 2008

Respectfully submitted,



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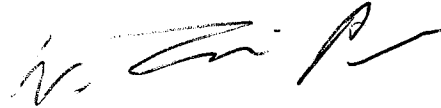
ATTORNEYS FOR THE CITY OF
ALEXANDRIA, VIRGINIA

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2008, a copy of the foregoing Petition of the City of Alexandria, Virginia, for Leave to File a Reply to a Reply was served by first class mail, postage prepaid, upon the following:

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A handwritten signature in black ink, appearing to read 'W. Eric Pilsk', is written above a horizontal line.

W. Eric Pilsk