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ENTERED
Office of Proceedings
August 15, 2014
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Public Record

August 15, 2014

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Soo Line Railroad Company – Petition for Declaratory Order
Finance Docket No. 35850

Dear Ms. Brown:

On behalf of the Soo Line Railroad Company, I am enclosing the following document for filing in the above-referenced proceeding:

1. Reply to a Reply and Motion for Leave to File of Soo Line Railroad Company.

Thank you for your attention to this matter.

Sincerely,

STINSON LEONARD STREET LLP

A handwritten signature in blue ink, appearing to read "David F. Rifkind".

David F. Rifkind

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35850

SOO LINE RAILROAD COMPANY --
PETITION FOR DECLARATORY ORDER

**REPLY TO A REPLY
AND MOTION FOR LEAVE TO FILE
OF SOO LINE RAILROAD COMPANY**

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Attorneys for Soo Line Railroad Company

Dated: August 15, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35850

SOO LINE RAILROAD COMPANY --
PETITION FOR DECLARATORY ORDER

**REPLY TO A REPLY
AND MOTION FOR LEAVE TO FILE
OF SOO LINE RAILROAD COMPANY**

On July 17, 2014, Soo Line Railroad Company, doing business as Canadian Pacific (“CP”), filed a petition seeking a declaratory order from the Board that state and local preclearance and permitting requirements that the City of St. Paul, Minnesota (the “City”) sought to impose on CP’s Yard track extension project (the “Project”) are categorically preempted by 49 U.S.C. § 10501. CP sought this relief after the City sought to delay decisions on various preclearance applications by requiring that CP submit the Project to an additional state environmental review process. On August 12, 2014, the City filed a response in which it appears to acknowledge that such preclearance requirements are indeed subject to federal preemption, and asks the Board to deny CP’s request for a declaratory order as moot. Notwithstanding the City’s acknowledgement, for the reasons discussed below CP submits that the issue is not moot and that a declaratory order is warranted.

As demonstrated by the City’s response in this proceeding and by the fact that this is the second time in recent years that CP has been forced to seek judicial or agency relief on

preemption grounds, the City knew that its efforts to forestall the St. Paul Yard Project was subject to federal preemption. *See Soo Line R.R. Co. v. City of St. Paul*, 827 F. Supp.2d 1017, 1022 (D. Minn. 2010). Moreover, the City raises the specter that it may use what it terms as its “generally applicable health and safety requirements or other similar police power requirements” to disrupt or delay the Project. Indeed, the City predicts that the parties may find it necessary to return to the Board with respect to the City’s efforts in this regard. Clearly, the City cannot use its health, safety and police powers to accomplish what it could not accomplish through its pre-clearance requirements. *See Grafton & Upton R.R. Co. – Pet. for Declaratory Order*, STB Docket No. FD 35779 at 5, 2014 WL 292443, at *5 (STB Jan. 27, 2014) (use of general health, safety and police powers are preempted if used to unreasonably burden interstate rail transportation). Given the City’s prior disregard of the law and its representation that its future actions with regard to the Project may require Board intervention, the issue is not moot and declaratory relief is warranted.

CP seeks leave to file this reply to a reply in order to ensure that the Board has a full record and to clarify its position in light of the City’s apparent reversal. 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, the Board grants leave to file a reply to a reply “[w]hen good cause is shown, or when additional information is necessary to develop a more complete record...” *Waterloo Ry. Co. – Adverse Abandonment – Lines of Bangor & Aroostook R.R. Co.*, Docket No. AB—124 (Sub-No. 2), slip op. at 3 (STB served May 6, 2003); *See also City of Alexandria, VA. Petition for Declaratory Order*, FD 35157 (served Nov. 6, 2008 (allowing reply to reply “[i]n interest of compiling a full record”). Here, good cause exists for the Board to grant leave and to accept this filing. Namely, the City’s apparent change of heart, which was not previously communicated to

CP, represents a new development and, CP is concerned that the Board may be under the misimpression that CP shares the City's views on mootness. CP does not. CP requests that the Board accept this filing in the interests of ensuring a full record and grant CP's request for a declaratory order.

Dated : August 15, 2014


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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2014 I have caused the foregoing Reply To A Reply And Motion For Leave To File to be served, via First-Class Mail, postage prepaid, and via e-mail the following attorneys of record:

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