

ENTERED  
Office of Proceedings  
October 19, 2016  
Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 35991**

**THE ATLANTA DEVELOPMENT AUTHORITY  
D/B/A INVEST ATLANTA and  
ATLANTA BELTLINE, INC.**

---

**REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY  
AND ATLANTA BELTLINE, INC. TO INTERESTED PARTIES'  
FIRST SUPPLEMENT TO THE RESPONSE OF INTERESTED PARTIES**

---

The Atlanta Development Authority (the "Authority") d/b/a Invest Atlanta and Atlanta BeltLine, Inc. ("ABI") (collectively, "Petitioners"), hereby submit their Reply to the *First Supplement to the Response of Interested Parties to File New Evidence Obtained from Norfolk Southern in Opposition to Verified Petition for a Declaratory Order and Request for Expedited Consideration* ("Interested Parties' First Supplement"), filed in this proceeding on October 14, 2016. Petitioners file this Reply in conjunction with their motion for leave to file a reply to the Interested Parties' First Supplement pursuant to 49 C.F.R. § 1117.1, filed simultaneously in this proceeding.

As Petitioners demonstrated in detail in the Petition, the Supplemental Agreement set forth a legally acceptable mechanism for transferring the line and memorializing a mutually agreed-upon process for initiating abandonment proceedings, and preserved NSR's right to fulfill its common carrier obligation without interference from NSR's transferees. The Mason Entities' acquisition of the real estate underlying the Line, as well as subsequent transfers, did not require Board approval (Petition at 6-14).

As Petitioners established in the Petition at 13, the Board has concluded that provisions requiring the freight rail carrier to commence abandonment proceedings have “no effect on the freight railroad’s ability to meet its common carrier obligations, which continues unless and until the Board were to authorize its abandonment.” *N.J. Transit Corp.*, slip op. at 4. In *N.J. Transit*, the controlling agreement required the freight rail carrier to “commence an abandonment proceeding to terminate its common carrier obligation on the [line] following four consecutive years of non-use of the easement for the revenue movement of freight traffic.” *Id.* The Board acknowledged that it had already been over four years since the freight rail carrier had operated over the line, such that this option might be exercised immediately. *Id.* at 4 n.13. Its *State of Maine* analysis was unaffected, however, “because the Board would still be required to authorize the abandonment.” *Id.* Similarly, that the Mason Entities were granted the right to require NSR to commence abandonment proceedings “had no effect on [NSR’s] ability to meet its common carrier obligation.” *Id.* at 4. As in other similar cases, the Mason Entities could not on their own eliminate that common carrier obligation – an order of this Board pursuant to 49 U.S.C. § 10903 and applicable regulations was required.

The Interested Parties’ assertions in the First Supplement have already been addressed in the Petition in this proceeding, all relevant documents are in the Board’s docket, and the Board has before it all the information it needs in order to render its decision.

Petitioners respectfully reiterate their request for expedited consideration. This request is made more urgent by the pending state proceeding to quiet title, filed in Fulton County, Georgia, on March 31, 2016, which would be greatly aided by the resolution of this Board proceeding.

## CONCLUSION

For the foregoing reasons, the Authority and ABI respectfully request that the Board issue an order that (1) the Mason Entities' acquisition of the underlying real estate from NSR did not require Board approval, and therefore the absence of Board approval is not a basis for voiding the transaction; (2) the Authority and its predecessors-in-interest's acquisition of the underlying real estate did not require Board approval, and therefore the absence of Board approval is not a basis for voiding the transaction; and (3) the Board has no continuing jurisdiction over the Line following NSR's consummation of abandonment of the Line in October 2010, and therefore need not approve any future conveyance of the underlying real estate.

Respectfully submitted,



Charles A. Spitulnik  
Allison I. Fultz  
Steven L. Osit  
Kaplan Kirsch & Rockwell LLP  
1001 Connecticut Avenue, NW, Suite 800  
Washington, DC 20036  
(202) 955-5600

Counsel for the Atlanta Development  
Authority d/b/a Invest and Atlanta BeltLine,  
Inc.

Dated: October 19, 2016

**Before the  
Surface Transportation Board  
Washington, D.C.**

**Finance Docket No. 35991**

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that on this 18th day of October 2016, I have caused a copy of the foregoing Reply of The Atlanta Development Authority and Atlanta Beltline, Inc. to Interested Parties' First Supplement to the Response of Interested Parties to File New Evidence Obtained from Norfolk Southern in Opposition to Verified Petition for a Declaratory Order and Request for Expedited Consideration to be served upon the following individuals via first class mail, postage prepaid:

R. Kyle Williams  
Nicholas Bohorquez  
Williams Teusink, LLC  
The High House  
309 Sycamore Street  
Decatur, Georgia 30030

Maquiling Parkerson  
Greg Summy  
Norfolk Southern Railway  
Three Commercial Place  
Norfolk, VA 23510



---

Charles A. Spitulnik  
Kaplan Kirsch & Rockwell LLP  
1001 Connecticut Avenue, NW  
Suite 800  
Washington, DC 20036  
(202) 955-5600  
cspitulnik@kaplankirsch.com

Dated: October 19, 2016