



KAPLAN KIRSCH ROCKWELL

240746

ENTERED
Office of Proceedings
May 24, 2016
Part of
Public Record

May 24, 2016

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *The Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc. –
Verified Petition for a Declaratory Order, Finance Docket No. 35991*

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding (a) the Motion for Leave to File a Reply and (b) the Reply of The Atlanta Development Authority and Atlanta Beltline, Inc. to Response of Interested Parties.

Please do not hesitate to contact me if you have any questions. Thank you very much for your assistance in this matter.

Sincerely,

Allison I. Fultz

Counsel for The Atlanta Development Authority and Atlanta BeltLine, Inc.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35991

**THE ATLANTA DEVELOPMENT AUTHORITY D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
VERIFIED PETITION FOR A DECLARATORY ORDER**

**MOTION OF THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
FOR LEAVE TO FILE A REPLY TO RESPONSE OF INTERESTED PARTIES
IN OPPOSITION TO VERIFIED PETITION FOR A DECLARATORY ORDER AND
REQUEST FOR EXPEDITED PETITION**

Communications with respect to this document should be addressed to:

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
Email: csputulnik@kaplankirsch.com
afultz@kaplankirsch.com
sosit@kaplankirsch.com

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

Dated: May 24, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35991

**THE ATLANTA DEVELOPMENT AUTHORITY D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
VERIFIED PETITION FOR A DECLARATORY ORDER**

**MOTION OF THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
FOR LEAVE TO FILE A REPLY TO RESPONSE OF INTERESTED PARTIES
IN OPPOSITION TO VERIFIED PETITION FOR A DECLARATORY ORDER AND
REQUEST FOR EXPEDITED PETITION**

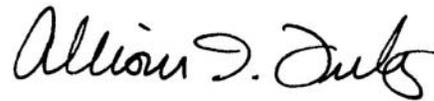
The Atlanta Development Authority, d/b/a Invest Atlanta (the “Authority”), and Atlanta BeltLine, Inc. (“ABI”) (collectively, Petitioners) hereby move this Board pursuant to 49 C.F.R. § 1117.1 for leave to file a short, 3 page reply to the Response of Interested Parties to the Petitioners’ Second Supplement to Petition for Declaratory Order, filed in this proceeding on May 19, 2016 (“Interested Parties’ Response”). The Petitioners’ proposed Reply to the Interested Parties’ Response is submitted herewith.

Although the rules governing this proceeding prohibit the filing of a reply to a reply (49 C.F.R. §1104.13(c)), this Board permits parties to a proceeding to file a reply to a reply when that submission “provides a more complete record, clarifies the arguments, will not prejudice any party, and does not unduly prolong the proceeding. It is within the Board’s discretion to permit otherwise impermissible filings . . .” STB Docket No. AB-6 (Sub-No. 468X), *BNSF Railway Company — Abandonment Exemption — In Kootenai County, ID, slip op.*, at 1 (Service Date Nov. 27, 2009).

Granting this motion will not broaden the issues raised in this proceeding, because the Petitioners seek only to correct the record as to matters raised in the Interested Parties' Response. Accordingly, granting this motion will not extend the time required for the Board to address the issues raised in this proceeding and will not otherwise prejudice any party hereto or prolong this proceeding.

Wherefore, the Petitioners respectfully request the Board to permit the filing of the attached Reply.

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
Email: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
sosit@kaplankirsch.com

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

Dated: May 24, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2016, I have caused a copy of the foregoing Motion of The Atlanta Development Authority d/b/a Invest Atlanta and Atlanta Beltline, Inc. for Leave to File a Reply to Response of Interested Parties 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
Williams Teusink, LLC
The High House
309 Sycamore Street
Decatur, Georgia 30030

Maquiling Parkerson
Norfolk Southern
Three Commercial Place
Norfolk, VA 23510



Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, DC 20036
(202) 955-5600
afultz@kaplankirsch.com

Dated: May 24, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35991

**THE ATLANTA DEVELOPMENT AUTHORITY D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
VERIFIED PETITION FOR A DECLARATORY ORDER**

**REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
TO RESPONSE OF INTERESTED PARTIES
IN OPPOSITION TO VERIFIED PETITION FOR A DECLARATORY ORDER AND
REQUEST FOR EXPEDITED PETITION**

Communications with respect to this document should be addressed to:

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
Email: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
sosit@kaplankirsch.com

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

Dated: May 24, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35991

**THE ATLANTA DEVELOPMENT AUTHORITY D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
VERIFIED PETITION FOR A DECLARATORY ORDER**

**REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.
TO RESPONSE OF INTERESTED PARTIES
IN OPPOSITION TO VERIFIED PETITION FOR A DECLARATORY ORDER AND
REQUEST FOR EXPEDITED PETITION**

The Atlanta Development Authority, d/b/a Invest Atlanta (the “Authority”), and Atlanta BeltLine, Inc. (“ABI”) (collectively, “Petitioners”), file this brief Reply to the Response of Interested Parties to the Petitioners’ Second Supplement to Petition for Declaratory Order, filed in the docket for this matter on May 19, 2016 (the “Interested Parties’ Response”). Petitioners have simultaneously filed a motion seeking the Board’s leave to file this reply to a reply in order for the STB to have before it a complete and accurate record.

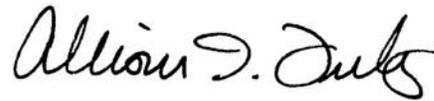
Counsel for the Interested Parties incorrectly asserts that “there is no documentation in the record related to the post-conveyance interaction between Norfolk Southern and the Mason Entities to indicate whether Norfolk Southern ‘retained (1) a permanent, irrevocable, and exclusive freight rail operating easement, and (2) sufficient interest and control over the [rail line] to permit it to carry out its common carrier obligation.’” Interested Parties’ Response at 5 (citation omitted). This assertion is incorrect. Petitioners direct the attention of this Board and counsel for the Interested Parties to the Petition, filed on January 8, 2016, in this proceeding, to which is attached the deed conveying Norfolk Southern’s fee interest in the subject line to the

Mason Entities, and explicitly reserving to Norfolk Southern an exclusive easement for railroad purposes. Exhibit A to Petition at p. 2 and at Exhibit B. As Petitioners have previously demonstrated, all of the documentation relevant to this matter is in the record. The Interested Parties are correct that the record demonstrates no post-conveyance interaction on this issue. The reason for that is simple. There has been none. The easement and the obligations related to NS's common carrier obligation remain in place until this Board extinguishes that obligation pursuant to 40 U.S.C. §10903. Absent a showing that NS has secured abandonment authorization, that obligation remains in place, undisturbed – except by the Interested Parties' incursion onto the rail corridor that remains fully subject to this Board's jurisdiction.

While the letter attached as Exhibit A to the Interested Parties Response is irrelevant to this proceeding, Petitioners have responded to this letter to correct errors of law contained therein, since the Board does not have jurisdiction over the state property law issues in the Superior Court Action. *See Gen. Ry. Corp.. d/b/a Iowa Northwestern R.R. - Exemption for Acquisition of Railroad Line - in Osceola and Dickinson Counties. IA.* STB Finance Docket No. 34867, slip op. at 4 (Service Date Jun. 15, 2007) (“Any [question] regarding ... ownership of the Line, involves questions of state contract and property law. The [Surface Transportation] Board is not the proper forum to resolve such disputes. Rather, these matters are best left for state courts to decide”). Counsel for the Interested Parties misapprehends that the instant STB proceeding will dispose of questions relating to encroachments on the real property belonging to Petitioners, which are strictly matters of state property law. This Board is being asked to confirm the regulatory status of the line. The Court in Georgia is being asked an entirely different question. Accordingly, issues in this proceeding and the Superior Court Action are specific to their respective venues and do not overlap.

The record in this matter is fully developed, and the Board is in a position to make its determination. As Petitioners set forth in detail in their Reply filed on February 8, 2016, in response to the Response of Interested Parties in Opposition to the Petition, filed on January 27, 2016, the material facts underlying the Petition are not in dispute, all relevant documents are in the record, and accordingly no discovery or oral testimony is necessary. Petitioners' Reply at 2-4. Accordingly, the Petitioners respectfully request this Board to enter its decision in this proceeding expeditiously.

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
Email: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
sosit@kaplankirsch.com

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

Dated: May 24, 2016

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

Finance Docket No. 35991

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2016, I have caused a copy of the foregoing Second Supplement of The Atlanta Development Authority d/b/a Invest Atlanta and Atlanta Beltline, Inc. to Petition for a Declaratory Order to be served upon the following individuals via first class mail, postage prepaid:

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

Maquiling Parkerson
Norfolk Southern
Three Commercial Place
Norfolk, VA 23510



Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, DC 20036
(202) 955-5600
afultz@kaplankirsch.com

Dated: May 24, 2016