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

**Re: Philadelphia Belt Line R.R. – Petition for Declaratory Order,  
STB Finance Docket No. 35345**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find the Reply of HSP Gaming, L.P., and SugarHouse HSP Gaming, L.P., d/b/a The SugarHouse Casino to Motion of the Philadelphia Belt Line Railroad Company for Clarification.

Very truly yours,



Paul A. Cunningham  
Counsel for HSP Gaming, L.P., and SugarHouse  
HSP Gaming, L.P., d/b/a The SugarHouse  
Casino

Enclosure

cc: Charles A. Spitulnik, Esquire  
Allison I. Fultz, Esquire

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35345**

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**PHILADELPHIA BELT LINE RAILROAD COMPANY  
– PETITION FOR DECLARATORY ORDER**

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**REPLY OF HSP GAMING, L.P., AND SUGARHOUSE HSP GAMING, L.P.,  
d/b/a THE SUGARHOUSE CASINO, TO PETITION OF THE  
PHILADELPHIA BELT LINE RAILROAD COMPANY  
FOR CLARIFICATION**

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Dated: September 21, 2010

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**PHILADELPHIA BELT LINE RAILROAD COMPANY  
– PETITION FOR DECLARATORY ORDER**

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**REPLY OF HSP GAMING, L.P., AND SUGARHOUSE HSP GAMING, L.P.,  
d/b/a THE SUGARHOUSE CASINO, TO MOTION OF THE  
PHILADELPHIA BELT LINE RAILROAD COMPANY  
FOR CLARIFICATION**

HSP Gaming, L.P., and SugarHouse HSP Gaming, L.P., d/b/a The SugarHouse Casino (together, “SugarHouse”), hereby reply in opposition to the Petition of the Philadelphia Belt Line Railroad Company for Clarification (“Petition”), filed in this proceeding on September 3, 2010. As we show below, there is no need for clarification of the Board’s decision served August 4, 2010 (the “Decision”), in this proceeding.

In its Decision, the Board denied PBL’s Petition for Declaratory Order, finding that:

(1) PBL has not demonstrated that it ever perfected the right to operate as a common carrier over the PBL right-of-way; (2) PBL has neither demonstrated that it was a common carrier over the Penn Street Lines via trackage rights, a lease, or otherwise; nor established that PBL’s status as to those lines is related to the PBL right-of-way; and (3) 49 U.S.C. § 10903 does not apply to the PBL right-of-way.

**Decision at 3-4. The Decision was grounded entirely on federal law and contains nothing suggesting an intent to rule on the state law issues in PBL’s litigation against SugarHouse in the Court of Common Pleas for Philadelphia County (the “Court”). Rather, the Board declined to rule that PBL had rights under federal law that could preempt SugarHouse’s state law property rights, including its right to develop the SugarHouse casino project.**

Pursuant to the Court's June 7, 2010 Order, which required the parties in the pending litigation to notify it of any final decision by the Board on PBL's Petition for Declaratory Order, SugarHouse's state court counsel transmitted a copy of the Decision to the Court. Accompanying that copy was a cover letter that described the Decision as having "denied [PBL's] petition for an order declaring that [it] retains a rail right-of-way in the former Penn Street." Letter from Barbara Brigham Denys to The Honorable Idee C. Fox at 1 (Aug. 13, 2010) (Petition, Exhibit A).<sup>1</sup> PBL now claims that this statement – which did no more than accurately paraphrase the first sentence of the Board's own Decision<sup>2</sup> – was a "complete mischaracterization" of that Decision. See Letter from John B. Taulane, III, to The Honorable Idee C. Fox at 1 (Aug. 13, 2010) (Petition, Exhibit A). Moreover, according to PBL, SugarHouse's statement "is very likely to confuse the state Court as to the nature, scope and import of the Board's conclusions," by implying that the Decision "address[ed PBL's] property rights under state law. Petition at 3. PBL requests that, to prevent that from occurring, the Board "clarify" its Decision by rewriting the opening sentence of the Decision. Petition at 1, 3. PBL proposes that that sentence instead describe PBL's declaratory order petition as a request for a declaration "that PBL retains a common carrier obligation to provide freight rail service over the right-of-way of the former Penn Street, which the City of Philadelphia, Pennsylvania, has now stricken from the city plan." *Id.* at 2.

PBL's Petition serves no purpose other than to keep this proceeding needlessly alive, even though all material issues have been resolved. The Decision needs no clarification. Neither

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<sup>1</sup> PBL misquotes this letter in its Petition (at 2), omitting the word "rail" before "right-of-way."

<sup>2</sup> See Decision at 1 (stating that PBL "petitioned the Board for an order declaring that PBL retains a rail right-of-way on a former street that the City of Philadelphia, Pennsylvania, has now stricken from the city plan" (footnote omitted)).

it nor the cover letter from SugarHouse's counsel to the Court contains any suggestion that the Board ruled on the Pennsylvania property law rights that PBL seeks to have declared in the Philadelphia Court. And that Court is perfectly capable of reading the Decision and correctly understanding its "nature, scope and import"; there is no basis for PBL's suggestion to the contrary.<sup>3</sup> Moreover, the Decision's opening sentence, which PBL calls on the Board to rewrite, reflects the language of the prayer for relief in PBL's own declaratory order petition;<sup>4</sup> PBL provides no reason, other than its untenable claims of "mischaracterization" and "confus[ion]," why the Board's use of PBL's own characterization was not appropriate. Finally, since it is possible that the language now proposed by PBL could, if highlighted in the first sentence of the Decision, suggest misleadingly that PBL once had a right to operate as a common carrier over the former Penn Street right-of-way, the avoidance of such a suggestion is a further reason the Board should decline to rewrite the Decision as requested by PBL.

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<sup>3</sup> It seems especially unlikely that the Court would misunderstand what is at issue in this proceeding, given that all of PBL's and SugarHouse's submissions to the Board leading up to the Decision in this proceeding have been made available to the Court. *See* Letter from Barbara Brigham Denys to The Honorable Idee C. Fox at 2 (Aug. 13, 2010).

<sup>4</sup> *See* Petition for Declaratory Order at 11 (Jan. 14, 2010) ("PBL ... requests ... a declaratory order confirming that PBL retains its right-of-way over the former Penn Street ...").

CONCLUSION

The Board's Decision speaks for itself, contains nothing to suggest that it addresses any legal issues other than those arising under federal law, and requires no clarification. PBL's Petition for Clarification should be denied.

Respectfully submitted,



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SugarHouse HSP Gaming, L.P., d/b/a The  
SugarHouse Casino*

Dated: September 21, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 21st day of September, 2010, caused the foregoing Reply of HSP Gaming, L.P., and SugarHouse HSP Gaming, L.P., d/b/a The SugarHouse Casino to Motion of the Philadelphia Belt Line Railroad Company for Clarification by e-mail upon

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