

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, DC**

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**Finance Docket Number 35345**

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

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**PETITION OF THE PHILADELPHIA BELT LINE RAILROAD COMPANY  
FOR CLARIFICATION**

Dated: September 3, 2010

Communications with respect to this  
document should be addressed to:

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Attorneys for the Philadelphia Belt Line  
Railroad Company

**BEFORE THE  
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On August 4, 2010, the Surface Transportation Board issued a Decision denying the petition of the Philadelphia Belt Line Railroad Company, Inc. (“PBL”) for declaratory relief in this proceeding (the “Decision”). PBL hereby respectfully requests that this Board clarify a statement in the Decision purporting to address the scope of PBL’s petition.

Specifically, the Board summarizes PBL’s petition as a request 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.” Decision at 1. However, PBL requested a “declaratory order confirming that PBL’s right and obligation to provide freight common carrier service on the right-of-way including the former Penn Street in Philadelphia has not been abandoned or otherwise extinguished.” *Philadelphia Belt Line Railroad Company, Inc. – Petition for Declaratory Order*, STB Finance Docket No. 35345, Petition of PBL (Filed Jan. 14, 2010) (“*PBL Petition*”) at 1. The Board’s characterization of PBL’s request appears to focus solely on any property rights PBL may have retained under Pennsylvania law, whereas PBL sought the Board’s determination with respect to PBL’s federally-regulated railroad activities. Accordingly, PBL requests that the Board clarify and restate its characterization of the relief

requested by PBL to align (a) with PBL's request and (b) with the Board's determination concerning the existence of any common carrier obligation on the former Penn Street, as set forth in detail in the Decision. Specifically, PBL asks this Board to restate the first sentence in its Decision as follows, with footnote 1 to be retained as in the original:

On January 14, 2010, Philadelphia Belt Line Railroad Company ("PBL")<sup>1</sup> petitioned the Board for an order declaring 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.

<sup>1</sup>PBL is a Class III railroad that was incorporated in 1889 and has since operated in Philadelphia, Pennsylvania.

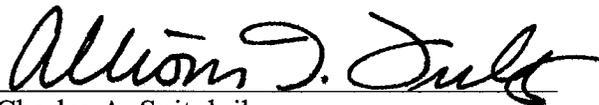
PBL emphasizes that this Petition is not a request to reopen or reconsider the Board's denial of the *PBL Petition*. However, the Board's recasting of PBL's request has been used by HSP Gaming, L.P. d/b/a SugarHouse Casino and SugarHouse HSP Gaming, L.P. (collectively, "HSP") to mischaracterize the substantive nature of the Decision in litigation before the Philadelphia Court of Common Pleas. That litigation, unlike this proceeding, specifically addresses state property law claims with respect to PBL's right-of-way. In a recent letter to the Court, HSP summed up the Board's action as consisting of the denial of PBL's "petition for an order declaring that [PBL] retains a right-of-way in the former Penn Street". Letter from Barbara Bingham Denys to the Hon. Idee C. Fox, Court of Common Pleas, Philadelphia County, August 13, 2010 (2 pages), re: *Phila. Beltline (sic) R.R. Co. v. HSP Gaming, L.P., et al.*, Sept. Term 2009, No. 0166 Control Nos. 09103504 (Stay) 10060504 (Preliminary Objections of Defendants), at 1. This letter and subsequent correspondence with the Court from HSP and PBL are attached hereto as Exhibit A. In response to PBL's objection to this characterization, a subsequent letter from HSP's counsel to the Court flatly declares that "[t]he Surface Transportation Board's decision speaks for itself." Letter from Barbara Bingham Denys to the Hon. Idee C. Fox, Court of Common Pleas, Philadelphia County, August 13, 2010 (1 page), re:

*Phila. Beltline (sic) R.R. Co. v. HSP Gaming, L.P., et al.*, Sept. Term 2009, No. 0166 Control Nos. 09103504 (Stay) 10060504 (Preliminary Objections of Defendants), at 1.

HSP's mischaracterization of the Decision is very likely to confuse the state Court as to the nature, scope and import of the Board's conclusions. To those conversant in the law governing the Board and activities carried out under the Board's statutory mandate, it is clear that the Decision addresses matters solely of federal law and addresses only the question related to PBL's federally regulated common carrier obligation. However, the Board's introductory statement can be incorrectly perceived as suggesting that the Decision addresses PBL's rights under state property law. It does not. In order to forestall any such misconstruction of the Board's Decision and to prevent the Court of Common Pleas from arriving at invalid conclusions regarding the import of the Decision, PBL requests clarification of this single statement by the Board as described above.

WHEREFORE, PBL respectfully requests this Board to grant its Petition for Clarification in this proceeding.

Respectfully submitted,



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Attorneys for the Philadelphia Belt Line Railroad Company

Dated: September 3, 2010

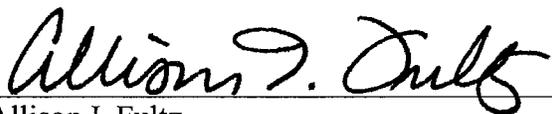
Certificate of Service

I hereby certify that I have this day caused to be served a copy of the foregoing  
PETITION OF THE PHILADELPHIA BELT LINE COMPANY, INC., FOR  
CLARIFICATION to be served by first class mail, postage prepaid upon the following:

John G. Harkins, Jr.  
Barbara Brigham Denys  
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Paul A. Cunningham  
James M. Guinivan  
HARKINS CUNNINGHAM LLP  
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Washington, DC 20006-3804

Dated this 3rd day of September, 2010.

  
Allison I. Fultz

**EXHIBIT A**

Correspondence of HSP Gaming, L.P., et al. and the Philadelphia Belt Line Railroad Co., Inc.  
with Court of Common Pleas, Philadelphia County, Pennsylvania,  
August 13, 2010

[attached hereto]

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August 13, 2010

Via Hand Delivery

The Honorable Idee C. Fox  
Court of Common Pleas, Philadelphia County  
656 City Hall  
Philadelphia, PA 19107

Re: *Phila. Beltline R.R. Co. v. HSP Gaining, L.P., et al.*, Sept. Term 2009, No. 1066  
Control Nos. 09103504 (Stay) & 10060504 (Preliminary Objections of  
Defendants)

Dear Judge Fox:

I write on behalf of defendants pursuant to this Court's Order entered June 7, 2010 in the above matter. The June 7, 2010 Order required each of the parties "to notify this Court within ten (10) days of learning of a final decision by the Surface Transportation Board [of Plaintiffs' Petition for Declaratory Order filed on January 14, 2010] and to advise this Court as to whether the notifying party will be exercising any right to appeal that decision." The Surface Transportation Board (the "STB") decided Plaintiffs' Petition for Declaratory Order on August 3, 2010, and defendants' counsel learned of that decision on August 4, 2010. [As is set forth in the decision, the STB denied plaintiff's petition for an order declaring that plaintiff retains a rail right-of-way in the former Penn Street.] The defendants therefore have no intention to appeal that decision.

Likewise, plaintiff wrote to the Court on August 12, 2010 stating that "PBL is not appealing [the STB's] decision." Although plaintiff requests that the Court now issue a revised Case Management Order, I note that the June 7, 2010 Order provides as follows: "(c) in the absence of an appeal by either party, that the stay shall be lifted upon a decision by the [STB] to the extent required to allow this Court to rule on the outstanding Preliminary Objections filed by Defendants." Defendants therefore respectfully request that the Court refrain from entering a revised Case Management Order until it has rendered a decision on the outstanding preliminary objections.

PHILADELPHIA

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WASHINGTON

Case ID: 090900166  
Control No.: 10060504

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*Attorneys at Law*

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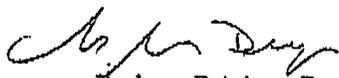
August 13, 2010

The Honorable Idee C. Fox

Further to defendants' January 21, 2010 and February 4, 2010 letters to the Court regarding Plaintiffs' Petition for Declaratory Order from the STB and Defendants' Reply to that Petition, attaching same, I am attaching here the STB's August 3, 2010 decision, and the following additional submissions that were made to the STB before it rendered its decision:

- (1) Motion of the Philadelphia Belt Line Railroad Company for Leave to File a Reply to a Reply and Verified Reply of the Philadelphia Belt Line Railroad Company to Reply of HSP Gaming, L.P. and SugarHouse HSP Gaming, L.P. d/b/a the SugarHouse Casino (filed May 7, 2010); and
- (2) 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 Leave to File a Reply (filed May 27, 2010).

Respectfully,



Barbara Brigham Denys

BBD/pad

Enclosures

cc: The Honorable Sandra Mazer Moss (via hand delivery) (w/ encl.)  
John B. Taulane III, Esq. (via email) (w/ encl.)

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August 13, 2010

**Via Fax: 215-686-9546**

The Honorable Idee C. Fox  
 Court of Common Pleas  
 City Hall, Rm. 656  
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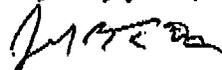
RE: Philadelphia Belt Line Railroad, Co. v. HSP Gaming, L.P.; et al.  
 Sept. Term, 2009, NO: 00166  
 Control # 09103504 (Preliminary Objections of Defendants)

Dear Judge Fox:

In her letter to your Honor dated August 13, 2010, Ms. Denys made the following argument concerning the scope of the STB's decision: "As set forth in the decision, the STB denied plaintiff's petition for an order declaring that plaintiff retains a rail right-of-way in the former Penn Street." This is a complete mischaracterization of the scope of the STB ruling, and is a gross distortion of any applicability of this agency's decision to the issues that this Court is now being asked to address. Those issues are concerned with state property law. The STB ruling did not, and could not, decide the remaining issue now remaining before this Court concerning Plaintiff's property rights under state property law. The STB ruling was solely concerned with whether or not the PBL had a common carrier obligation over its right of way that was recognizable as a matter of federal regulatory law. (See STB's Decision dated August 3, 2010, "Summary" on p. 6). This ruling did not in any way, shape or form address the plaintiff's property rights under state law.

While we understand that it is inappropriate to make argument in correspondence such as this, we felt compelled to respond to counsel's letter.

Very truly yours,



John B. Taulane, III

JBT/amf

Cc: Barbara Brigham Denys., Esquire (via email)

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August 13, 2010

Via Facsimile

The Honorable Idee C. Fox  
Court of Common Pleas, Philadelphia County  
656 City Hall  
Philadelphia, PA 19107

Re: ***Phila. Beltline R.R. Co. v. HSP Gaming, L.P., et al.***, Sept. Term 2009, No. 1066  
Control Nos. 09103504 (Stay) & 10060504 (Preliminary Objections of  
Defendants)

Dear Judge Fox:

I write for the sole purpose of reserving an objection to Mr. Taulane's characterization of the letter I delivered to Your Honor earlier today. The so-called "argument" that Mr. Taulane seeks to attribute to defendants' counsel is simply not contained in my letter, which refers to and encloses a copy of the Surface Transportation Board's decision. The Surface Transportation Board's decision speaks for itself.

Respectfully,



Barbara Brigham Denys

BBD/pad

cc: The Honorable Sandra Mazer Moss (via facsimile)  
John B. Taulane III, Esq. (via email)

PHILADELPHIA

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Case ID: 090900166  
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