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**Before the  
SURFACE TRANSPORTATION BOARD**

**ENTERED**  
Office of Proceedings  
May 16, 2023  
Part of  
Public Record

STB Docket No. FD 36575

**TOWNLIN RAIL TERMINAL, LLC  
– CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD –  
IN SUFFOLK COUNTY, NY**

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**TOWNLIN RAIL TERMINAL, LLC RESPONSE  
TO THE SUPPLEMENTAL EVIDENTIARY FILING OF  
TOWNLIN ASSOCIATION, INC.**

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*Counsel for  
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Dated: May 16, 2023

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**TO THE SUPPLEMENTAL EVIDENTIARY FILING OF**  
**TOWNLIN ASSOCIATION, INC.**

Townline Rail Terminal, LLC (“Townline Rail”) respectfully requests the Board reject the “Supplemental Evidentiary Filing” submitted by Townline Association, Inc. (the “Association”) on May 3, 2023, as an impermissible reply to the April 24, 2023 Townline Rail Reply (the “Townline Rail Reply”). If the Board accepts the Association’s Supplemental Evidentiary Filing (“Surreply”), Townline Rail respectfully requests leave to file this response.

**Argument**

A. The Association’s Supplemental Evidentiary Filing is an impermissible reply to a reply because it seeks to rehabilitate its argument that the Board lacks jurisdiction over the Townline Rail Proposed Line.

Under the Board’s regulations at 49 CFR §1104.13(c), a reply to a reply is not permitted. Although identified as a “supplemental evidentiary filing” containing “evidence recently found”<sup>1</sup>, the Association’s filing is an impermissible reply to the April 24, 2023, Townline Rail Reply.

The Association filed its Motion to Dismiss on April 4, 2023. In its May 3, 2023, Surreply it cites as “evidence recently found,” Facebook posts from February 2023. The

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<sup>1</sup> Surreply at 1. Referenced page numbers are to the PDF pagination.

Association also cites as “evidence it recently found” language from the Townline Rail website indicating to whom Townline Rail intends to market its rail services – “businesses within 2 miles.”<sup>2</sup> This language is substantially similar to the information Townline Rail provided to the Board in its Petition for Exemption (the “Petition”). Townline Rail states in its Petition that it is seeking to serve the “Covanta Energy waste-to-energy facility” and “[o]ther nearby customers.”<sup>3</sup> Because the information the Association offers as “evidence recently found” was available prior to submitting its Motion to Dismiss, the Association’s Surreply is clearly an effort to rehabilitate its argument that the Board does not have jurisdiction over the Proposed Line. The Board should reject the Surreply as an improper reply to reply.

If the Board grants the Association leave to file its “supplemental evidence” sua sponte, then Townline Rail respectfully requests leave to file this response in the interest of compiling a complete record.<sup>4</sup>

B. Townline Rail understands that if its petition is granted, upon exercise of the Board’s authority, it will have to provide service upon reasonable request (including for reasonable requests to transport hazardous materials).

The Association’s Surreply is offered to supplement its previous argument that “Townline will not be a railroad due to this construction project.”<sup>5</sup> First, the Association states that comments on the Facebook pages of CarlsonCorp, Inc. and Mr. Carlson indicate that Townline Rail “will not transport hazardous materials.”<sup>6</sup> Mr. Carlson’s comments do not indicate that Townline Rail would refuse to transport hazardous materials. Townline Rail

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<sup>2</sup> Surreply at 2.

<sup>3</sup> Petition at 4.

<sup>4</sup> *American Rocky Mountaineer, LLC – Petition for exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket No. 36468, slip op. at 3 n. 3 (served May 28, 2021).

<sup>5</sup> Surreply at 1.

<sup>6</sup> *Id* and Exhibit B.

understands that it is seeking common carrier authority and that such authority includes the obligation to provide service upon reasonable request. However, Mr. Carlson's comments reflect only the fact that the CarlsonCorp transload facility, which will be a non-carrier, will not seek approval from the Town of Smithtown or the New York State Department of Environmental Conservation ("DEC") for authorization to transload hazardous materials.

CarlsonCorp is developing a transloading facility to transload incinerator ash, construction and demolition debris ("C&D"), and aggregate.<sup>7</sup> CarlsonCorp will require zoning approval from the Town of Smithtown and a permit modification from the DEC for its proposed non-rail carrier transloading facility. CarlsonCorp will not seek approval from either the Town of Smithtown or DEC to transload hazardous materials. The development of the CarlsonCorp transloading facility is governed by state and local regulations whereas Townline Rail is seeking construction and operating authority from the Board to construct a rail line and to operate as a rail common carrier.

Mr. Carlson's Facebook statements are accurate as to the transfer facility, and do not demonstrate that Townline Rail will refuse to accept hazardous materials in violation of its common carrier obligation. If a customer should locate on the Proposed Line and that customer makes a reasonable request<sup>8</sup> for rail service that includes hazardous materials, Townline Rail accepts that it has a common carrier obligation to transport that material.

C. Townline Rail's comments stating how it intends to market the Proposed Line to local businesses is not evidence that it intends to limit its rail service in violation of its common carrier obligation to provide service upon reasonable request.

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<sup>7</sup> Townline Rail Petition for Exemption at 3.

<sup>8</sup> A reasonable request is one that is specific as to the volume, commodity, and time of shipment. *See generally, CSX Transp., Inc. – Abandonment- Between Bloomingdale and Montezuma, in Parke County, IN*, ICC Docket No. AB-55 (Sub-No. 486) *et al.*, 2002 WL 31045472 \*5 (served Sept. 13, 202).

The Association also argues that Townline Rail will not be a rail carrier because Townline Rail is marketing its services to potential local customers. The Association quotes the Townline Rail website which states, “[t]hese materials would serve businesses within 2 miles of the Terminal, within the local industrial complex.”<sup>9</sup> The Association argues, Townline Rail “appears to be saying it will limit parts of its rail service to entities within a two-mile radius of its rail facility.”<sup>10</sup> Although, not cited in the Association’s Surreply, Townline Rail made a similar statement in its Petition for Exemption - that it is seeking to serve “Covanta Energy waste-to-energy facility” and “[o]ther nearby customers.”<sup>11</sup>

As argued in the Townline Rail Reply, the Proposed Line falls within the Board’s jurisdiction because Townline Rail proposes to provide common carriage to shippers requesting service.<sup>12</sup> Board precedent in construction petition for exemption cases does not indicate any trepidation by the Board when a petitioner states that it seeks to serve local customers. For example, in *Northwest Tennessee Regional Port Authority – Construction and Operation Exemption – in Lake County, TENN.* STB Finance Docket No. 35802, slip op. at 3 (served Apr. 21, 2016), the Board approved a construction petition for service to a port, a development site that includes an industrial park, and to “other shippers in the area.” Similarly, in *Lone Star Railroad, Inc and Southern Switching Co – Track Construction and Operation Exemption – In Howard County, Tex.*, STB Finance Docket No. 35874, slip op. at 2 (served Mar. 3, 2016), the Board approved a petition for exemption for construction authority for a proposed rail line the purpose of which “is the efficient delivery of frac sand to [an] industrial park, where it would be

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<sup>9</sup> Surreply at 2 and Exh. B.

<sup>10</sup> Surreply at 2.

<sup>11</sup> Surreply at 4.

<sup>12</sup> Townline Rail Reply at 13.

transloaded to trucks and delivered to crude oil wellheads.” In addition, petitioners have sought Board approval to build out from industrial facilities to existing common carrier rail lines.<sup>13</sup> The Board has demonstrated no concern that these construction petitions improperly focused on the local need for the rail line to be considered for rail common carriage.

The Townline Rail comments cited by the Association in its Surreply do not indicate that Townline Rail is placing limits on the shippers it might serve. The comments indicate only the shippers that Townline Rail will market to, and its plans to market to local customers is entirely consistent with Board construction case law precedent.

Townline Rail understands that once it exercises the Board’s authority to construct and operate as a common carrier, it will have a common carrier obligation to provide rail service upon reasonable request.

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<sup>13</sup> See *Texas Railway Exchange LLC – Construction and Operation Exemption – Galveston County, Tex.*, STB Finance Docket 36186 (served Jan. 17, 2020); *Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – For Construction in Will County, IL*, STB Finance Docket No. 34060, slip op. at 1-2 (served Mar. 21, 2002).

## CONCLUSION

In conclusion, Townline Rail respectfully requests that the Board reject the Association's Surreply because it is an impermissible reply to a reply. If the Board accepts the Association's Surreply, Townline Rail respectfully requests that the Board accept this reply in rebuttal because the Association's "evidence" fails to demonstrate that the Townline Rail Proposed Line does not fall within the Board's jurisdiction or that Townline Rail does not intend to fulfill its common carrier obligations.

Respectfully submitted,



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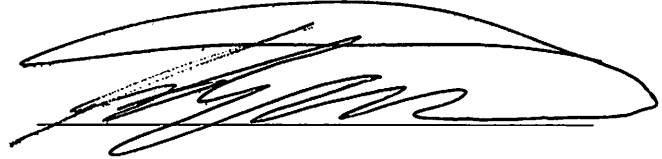
*Counsel for  
Townline Rail Terminal, LLC*

Dated: May 16, 2023

## VERIFICATION

I, Toby Carlson, declare under penalty of perjury that I have read the foregoing, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to and authorized to submit this verification.

Executed on May 4, 2023

A handwritten signature in black ink, appearing to read 'Toby Carlson', enclosed within a large, irregular oval shape.

Toby Carlson



## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2023, I caused a copy of the foregoing to be served on all parties of record by email or first class mail.



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