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November 21, 2024

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: STB Docket No. FD 36575, Townline Rail Terminal, LLC
– Construction and Operation Exemption of a Line of Railroad –
In Suffolk County, NY

Dear Ms. Brown:

On November 18, 2024, Mr. John Kenavan filed a petition for reconsideration ("Petition") of the Board's August 15, 2024, decision in this docket.¹ Under 49 C.F.R. § 1115.2(e), "[a]ppeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) the Board may authorize." Under the Board's regulations and according to the August 15 decision, petitions for reconsideration were due by September 4, 2024. Mr. Kenavan filed his petition 75 days after the due date.

On the merits of the Petition, Mr. Kenavan erroneously summarizes my *Smithtown News* letter to the editor (provided as counsel to Townline Rail in response to misstatements in prior letters to the editor) as "Townline Rail will never have to accept for transport hazardous material." (Petition at 3, emphasis added). The Petition further states that my comments in the *Smithtown News* stating the fact that the Townline Rail Proposed Line will be landlocked by the Long Island Railroad Port Jefferson Line and the Carlson Corp., non-carrier transloading facility, contradicts Townline Rail's prior comments to the Board that it would hold itself out as a common carrier and indicates an inability for Townline Rail to hold itself out as a common carrier. No such contradiction exists and simply reading the exhibits enclosed with the Petition demonstrates the Petition's over statement of my comments.

First, on the record in this proceeding, Townline Rail clearly shows how the Proposed Line would be built and operated as a common carrier. In the Townline Rail Petition for Exemption filed on November 22, 2022, and in the Environmental Assessment developed by the Board's Office of Environmental Analysis, the Townline Rail proposal is fully explained to the Board including the fact

¹ Under 49 C.F.R. § 1115.3, a petition will be granted only upon a showing of new evidence/changed circumstances or material error. The Petition fails to meet this standard.

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that the Proposed Line will be located in between the Carlson Corp. non-carrier transloading facility that is and will be regulated by state and local authorities and the Long Island Railroad Port Jefferson Line. This Petition is based on a failure to understand the November 22, 2022, Townline Rail Petition for Exemption. My letter to the editor does not contradict any filing before the STB; it corrects an inaccurate description of the Proposed Line in prior letters to the editor.

Second, the Board dismissed the Townline Association's April 4, 2023, Motion to Dismiss (alleging Townline Rail would not be a common carrier), and subsequently approved Townline Rail's Petition for Exemption fully informed of the layout and proposed operation of the Townline Rail Proposed Line. As the Board stated in its November 15, 2023, decision, "[b]ecause Townline [Rail] would provide common carrier railroad transportation for compensation if the proposed construction is approved and the Line built, the Board finds that Townline [Rail] would be a rail carrier engaged in rail transportation, and that therefore the proposed construction is subject to the Board's jurisdiction." Slip op. at 5.

Finally, the Petition fails to support its argument that Townline Rail is unable to hold itself out as a common carrier. The Townline Rail Proposed Line will serve customers that will be subject to state and local regulation including the regulation of whether the transloading of hazardous materials by customers will or will not be permitted (currently they are not permitted). Townline Rail will be serving this market and recognizing this constraint on available freight that may be transloaded, as I did in my letter to the editor, does not demonstrate that Townline Rail is unable to be a common carrier.

Townline Rail respectfully requests that the Board reject Mr. Kenavan's Petition as untimely because it is 75 days late. If the Board accepts the Petition, the Board should deny the Petition because it fails to meet the standards for a petition for reconsideration since it provides no support for its position that Townline Rail has an inability to hold itself out as a common carrier.

Sincerely,



Justin J. Marks
Counsel to Townline Rail Terminal, LLC

cc: All parties of record.