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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street SW, Room 1034
Washington, DC 20024

Re: FD 36623

Rail Line Abutting Landowners – Verified Petition for Declaratory Order

Dear Ms. Brown,

Pursuant to 49 C.F.R. § 1104.13(a), Massachusetts Bay Transportation Authority (“MBTA”) replies in opposition to the Rail Line Abutting Landowners’ (the “Landowners”) motion for leave to file a rebuttal (the “Rebuttal”) in this proceeding. The motion and Rebuttal were filed on July 26, 2022 (but inadvertently dated as of June 26, 2022.) Contrary to the Landowners’ claim in support of their motion, the Rebuttal is not helpful to the issues here, and it is prejudicial to MBTA because it incorrectly applies Massachusetts state law to bolster the Landowners’ appeal for entirely-unwarranted Surface Transportation Board (“Board”) action. Accordingly, the motion should be denied in keeping with 49 C.F.R. § 1104.13(c).

As brief background, the Landowners filed their petition for declaratory order (the “Petition”) asking whether a particular MBTA-owned strip of land (the “Corridor”) that once had served as railroad right-of-way has been fully abandoned under federal law. The Landowners claim such a jurisdictional ruling would enable them to invoke alleged reversionary rights in portions (or all) of the Corridor. But the Landowners have not proven, and cannot prove, that they possess any such rights. MBTA has observed without dispute that the Landowners are a new iteration of local interests that already have appeared before the Board in an earlier proceeding seeking to block the installation of a subterranean power line along the Corridor that

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would improve electricity transmission to homes and businesses in Massachusetts. MBTA has already explained that Board action on the present Petition would be premature.

The Rebuttal is thoroughly *un*helpful. Its central focus is *Murray v. Mass. Dep't of Conservation and Recreation*, 2014 WL 4960872 (Mass. Land Court, Oct. 6, 2014) ("*Murray*"), which the Landowners incorrectly contend supports Board action when the opposite is true. *Murray* dealt with a different railroad line in Massachusetts where the landowners possessed *existing* (and not merely theoretical) reversionary rights in the right-of-way. The existence of such reversionary rights was critical to the *Murray* court's holding, which states, repeatedly, that the relevant railroad right-of-way consisted of easement interests. Because the *Murray* plaintiffs had already established their reversionary rights, the *Murray* court properly abstained from ruling on the railroad corridor's jurisdictional status (bearing upon the potential exercise of the adjacent landowners' state property law reversionary rights), deferring to the Board to make the jurisdictional determination.

Here, unlike in *Murray*, the Landowners lack reversionary rights. Instead, they have baldly asserted "possible property rights" (Petition, 11), and otherwise vaguely allege "rights regarding their homes and businesses" (Rebuttal, 1 n. 1). The Landowners do not explain why they believe that Board resolution of the jurisdictional issue is a necessary prerequisite to an effort under state law both to establish the Landowners' alleged property rights in the Corridor, and thereby to undo MBTA's comprehensive fee simple interests. In fact, the Landowners don't need a jurisdictional order from the Board. Instead, the Landowners should first establish their reversionary rights in court as the plaintiffs in *Murray* did; their failure to take this initial step argues that no such "possible" rights exist. Accordingly, *Murray* is fundamentally inapposite, as the Landowners should know, and it is not controlling here. The proffered Rebuttal is not helpful because it misstates the law for an intended outcome, and, as such, the Board should deny the motion to include the Rebuttal in this record. Moreover, by glossing over critical factual differences between the facts here and those in *Murray*, the Rebuttal is prejudicial to MBTA, and, for this reason also, the motion to file the Rebuttal should be denied.

Finally, the Rebuttal is wrong in suggesting that MBTA has argued for a Board ruling on Massachusetts law. MBTA has done no such thing. MBTA does not want, and does not expect, the Board to rule on the merits of the Landowners' non-existent "possible property rights." Again, this is a gating issue "for the state court to decide." Rebuttal, 4. MBTA raised the state property law issues to reinforce that the Landowners have no property rights in the Corridor (as the Petition had indicated), to show why the Landowners are unlikely to gain any such rights under the circumstances, and to explain MBTA's view of the situation. On that note, the Rebuttal tacitly doubles down on the heart of the Landowners' Petition, which amounts to a

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call for the Board to speculate about whether the Landowners could obtain “possible property rights” in the Corridor under state law that would, in turn, support a closer look at the Corridor’s jurisdictional status. As such, the Petition and the Rebuttal seek Board action where longstanding agency precedent clearly establishes that none is warranted. *See, e.g., San Luis & Rio Grande Railroad – Petition for Declaratory Order*, FD 35380 (STB served July 25, 2011); and see MBTA’s Reply to the Petition (filed July 12, 2022), 4 n. 6 (and cases cited therein).

For the reasons set forth above, the Rebuttal is unhelpful and prejudicial. Accordingly, applying the standard for acceptance of such otherwise-prohibited filings advanced by the Landowners, the motion for leave to file a Rebuttal should be denied.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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cc: All parties of record