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March 4, 2020
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FILED
March 4, 2020
SURFACE
TRANSPORTATION BOARD

**CATTARAUGUS LOCAL
DEVELOPMENT CORP.**

PETITION FOR DECLARATORY RELIEF

Docket No. FD_36389_0

AB_1300_0_X

**I.
INTRODUCTION**

Pursuant to 49 USC § 1321 (2018) and 5 USC § 554(e) (2018), the Cattaraugus Local Development Corporation (the “CLDC”) petitions the Surface Transportation Board (the “Board”) to issue a declaratory order declaring that a section of railroad in Cattaraugus County, New York described on **Exhibit A** attached hereto (the “Rail Line”) is abandoned pursuant to 49 U.S.C. 10502 (2018), or in the alternative, that the CLDC may satisfy the requirements for an Exempt Abandonment pursuant to 49 U.S.C. 10502 (2018).

**II.
STATEMENT OF FACTS**

The CLDC was established in 1996 as a New York not-for-profit corporation to create community and economic development opportunities throughout Cattaraugus County, New York. It acquired the Rail Line from the Cattaraugus County Industrial Development Agency (the “IDA”) in August 2000 (Liber 996 of Deeds at page 471). The IDA acquired the Rail Line from the Trustees of the Erie Lackawanna Railway Company (the “Railroad Company”) pursuant to an Order of the United States District Court for the Northern District of Ohio, Eastern Division, dated February 28, 1980 (the “Order”), attached hereto as **Exhibit B**. The Order directed that the Rail Line be conveyed “free and clear of all liens, including judgment

liens, mortgage liens, liens authorized by the Court and tax liens, including interest and penalties” and that “all liens on the property conveyed [by the Order] . . . shall be divested from the property and shall attach, according to their respective priorities, to the proceeds from the transaction authorized herein.”¹

Prior to conveying the Rail Line to the IDA, the Railroad Company operated the Rail Line as part of the Dunkirk Branch of USRA Line No. 1250. The IDA acquired the corridor in 1980 and by the early 1990s, the Rail Line was no longer in operation. On September 6, 1996, the New York & Lake Erie Railroad Company, (the” Railroad Operator”) contracted by the IDA to operate their railroad holdings provided notice (the “Notice”) to various parties---including the Department of Defense, the National Park Service, the US Department of Agriculture, and the Commissioner of Transportation---under Subpart F of Title 49 of the Code of Federal Regulations; a copy of such notice is attached hereto as **Exhibit C**. The Notice indicates that a formal Notice of Exemption was to be filed with the Board on September 17, 1996. However, while the Railroad Operator Company forwarded this Petition of Abandonment, was issued Docket #773 by the Surface Transportation Board (STB), it appears the Railroad Operator never pursued the Petition of Abandonment to completion. Therefore, this explains why a Certificate of Abandonment was could not be found in the real property records.

Although the Petition for Abandonment had been applied for, by the Railroad Operator, the Railroad Operator actions led the IDA to believe it had been approved and the IDA treated the property as if it had been legally abandoned. Section 18 of the New York Transportation Law granted the State’s Commissioner of Transportation the preferential right to acquire

¹ See **Exhibit B**.

property that has been “abandoned for railroad transportation purposes.”² Accordingly, to ensure clear title to the property, the IDA submitted a Request for Release of Preferential Rights to the New York State Department of Transportation, and such Release was granted by the State on March 20, 2000. A copy of the Release is attached hereto as **Exhibit D**.

The IDA transferred title to the Rail Line to the CLDC in August 2000. That same year, the CLDC began developing the Rail Line as the Senator Pat McGee Trail as a Rails-to-Trails Program. The trail opened in 2005 and has been continuously operated by the CLDC. However, in September 2016, the CLDC began taking steps to transfer ownership of the Rail Line to New York State (the “State”) for continued operation of the McGee Trail. As part of this process, the CLDC became aware, in May 2019, of a major title issue with the property: namely, that a Certificate of Abandonment from the Board had never been recorded in the real property records in Cattaraugus County. With further research by CLDC and direct contact with the staff of the STB it was indicated that formal abandonment of the corridor was never finalized. Accordingly, the CLDC seeks a declaration confirming that the Rail Line has been de facto abandoned. Alternatively, the CLDC seeks a declaration from the Surface Transportation Board allowing the CLDC to satisfy the Exempt Abandonment procedures for the Rail Line enumerated in 49 CFR § 1152.50.

III. ARGUMENT

Section 774(b) of Title 45 of the United States Code provides that:

- (1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter,

² NY Transportation Law § 18(1).

except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.³

The specific procedures for abandonment are outlined in 49 USC § 10903 (2018) and 49 CFR § 1152.20 (2019). However, certain rail carriers are exempt from the requirements of USC § 10903 if they satisfy certain conditions (an "Exempt Abandonment"):

(b) An abandonment or discontinuance of service or trackage rights is exempt if the carrier certifies that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The complaint must allege (if pending), or prove (if decided) that the carrier has imposed an illegal embargo or other unlawful impediment to service.⁴

The railroad seeking the exemption must file a Notice of Exemption with the Board.⁵ Ten days prior to filing such Notice of Exemption, the railroad must provide notice to certain enumerated parties indicating its intent to abandon the rail line.⁶

When the railroad provides the Notice of Exemption to the Board, it must also deliver documentation that includes the proposed consummation date of the abandonment, a certification in the form required by 49 CFR § 1152.50(b), all information required by 49 CFR § 1152.22(a)(1)-(4), (7)-(8), (e)(4), a statement indicating the level of labor protection, and a certificate attesting that the railroad complied with the notice requirements of 49 CFR §§

³ 45 USC § 744(b)(2018). Note that subsection (c) involves continuation payments and is not applicable to the facts here.

⁴ 49 CFR § 1152.50(b) (2019); *see* 49 U.S.C. 10502 (2018).

⁵ *Id.* § 1152.50(d)(1).

⁶ *Id.*

1152.50(d)(1) and 1105.11.⁷ Twenty days after the railroad files the Notice of Exemption with the Board, the Board must publish a notice in the Federal Register indicating the proposed abandonment.⁸

A. The Railroad Company Appears to have Initiated Abandonment Procedures.

The Operating Railroad Company provided notice to the Department of Defense, the National Park Service, the U.S. Department of Agriculture, the National Park Service, and the Commissioner of Transportation, NYS Dept. of Transportation in the form and substance required by 49 CFR § 1152.50(d)(1). The letter indicates that the Operating Railroad Company would file a Notice of Exemption to the U.S. Department of Transportation's Surface Transportation Board (STB) on September 17, 1996. The CLDC does not have any records indicating whether the Board actually received such notice, and the CLDC has not been able to locate any publications in the Federal Register regarding the proposed abandonment. However, it should be noted that the Board did issue a docket number (#773) for the Operating Railroad Company. This indicates the Operating Railroad Company's intent to complete the abandonment process and may even show that the Board had communicated with the Operating Railroad Company about its intent to abandon the Rail Line.

Though the Operating Railroad Company at least attempted to comply with the procedures for Exempt Abandonments as enumerated in 49 CFR § 1152.50, the result of such attempts at abandonment are unclear. Despite diligent efforts, the CLDC has been unable to find any information indicating whether the Board received the Exemption Notice and whether it granted the Certificate of Abandonment. The parties have been treating the Rail Line as

⁷ *Id.* § 1152.50(d)(2).

⁸ *Id.* § 1152.50(d)(3).

abandoned since the late 1990s, and the tracks were removed in 1999 and early 2000.

Accordingly, the CLDC requests that the Board declare the Rail Line abandoned for purposes of 49 USC § 10903.

B. The CLDC Can Satisfy the Requirements for Exempt Abandonment.

If the Board cannot declare the Rail Line abandoned, the Board should allow the CLDC to satisfy the requirements for an Exempt Abandonment as enumerated in 49 CFR § 1152.50.

Section 1152.50 of Title 49 of the Code of Federal Regulations requires a “carrier” to certify that the abandonment is exempt from the typical abandonment procedure.⁹ The “carrier” must certify that “no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period.”¹⁰ The Regulations define a “carrier” as “a railroad company or the trustee or trustees of a railroad company subject to regulation under 49 U.S.C., Subtitle IV, chapter 105.”¹¹ The CLDC is neither a railroad company nor a trustee of a railroad company. Accordingly, the CLDC does not fit the definition of a “carrier” and ordinarily would not have standing to file a Notice of Abandonment with the Board.

As discussed in Section II hereof, the CLDC took title to the property from the IDA in August 2000. Even before the CLDC took title, the IDA and the Operating Railroad Company

⁹ 49 CFR § 1152.50(b) (2019).

¹⁰ *Id.*

¹¹ 49 CFR § 1152.2(f) (2019).

had effectively treated the Rail Line as if it had been abandoned. Throughout the entirety of the CLDC's ownership, the CLDC has developed and operated the Rail Line as the Senator Pat McGee Trail. The Rail Line has not been operational as a railway for the entirety of the CLDC's 19+years of ownership. Because the CLDC has owned and developed the Rail Line for almost twenty years, the CLDC is in the best position to certify the requirements for Exempt Abandonment: that local traffic has not moved over the Rail Line in the last two years and that no formal complaints have been filed with the Board or the U.S. District Court during such two-year period. The CLDC has the requisite information to submit an Exemption Notice and satisfy the requirements of an Exempt Abandonment. Accordingly, the CLDC requests that the Board issue a declaration allowing the CLDC to satisfy the requirements of an Exempt Abandonment under 49 CFR § 1152.50.

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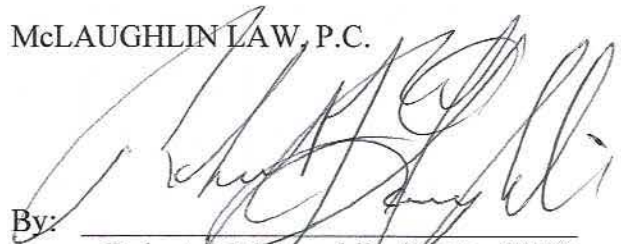
IV.
CONCLUSION

Based on the discussion above, the CLDC requests that the Board declare the Rail Line de facto abandoned. In the alternative, the CLDC requests that the Board declare that the CLDC may satisfy the Exempt Abandonment requirements on the Railroad Company's behalf.

Respectfully submitted

Dated: Albany, New York
March 2, 2020

McLAUGHLIN LAW, P.C.

By: 

Robert J. McLaughlin (RJM - 0476)
Member of the Firm
90 State Street, Suite 700
Albany, NY 12207
(518) 520-0740

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CATTARAUGUS LOCAL
DEVELOPMENT CORP.**

PETITION FOR DECLARATORY RELIEF

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Docket No. FD_36389_0

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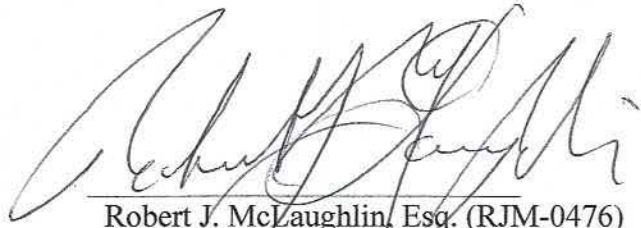
AFFIRMATION IN SUPPORT OF PETITION FOR DECLARATORY RELIEF

ROBERT J. McLAUGHLIN, an attorney duly appointed to appear before the Courts of the State of New York and the Federal Courts of the United States, affirms under the penalties of perjury the following:

1. I am a member of McLaughlin Law, P.C., attorneys for the Petitioner, Cattaraugus Local Development Corp. As such, I am fully familiar with all the facts and circumstance herein.
2. This is a Petition for Declaratory Relief to complete the abandonment of a portion of the Dunkirk Branch of the Erie Lackawanna Rail line, State of New York.
3. Attached to the Petition is the Affidavit of Richard J. LeFeber, the Executive Director of the Petitioner.
4. I have read the Petition, the Affidavit of Mr. LeFeber and all of the supporting Exhibits to the Petition.
5. I have been authorized to file the Petition on behalf of the Petitioner.
6. Based on my review of the Petition and the supporting documents, I believe that there are good and legal grounds to grant the relief requested.
7. The Petition has not been submitted for delay.

WHEREFORE, your affirmant respectfully requests that the Petition be granted in its entirety.

Dated: Albany, New York
March 2, 2020

A handwritten signature in black ink, appearing to read 'Robert J. McLaughlin', written over a horizontal line.

Robert J. McLaughlin, Esq. (RJM-0476)
Member of the Firm
McLaughlin Law, P.C.
90 State Street, Suite 700
Albany, NY 12207
(518) 520-0740

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PETITION FOR DECLARATORY RELIEF

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Docket No. FD_36389_0

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AFFIDAVIT IN SUPPORT OF PETITION FOR DECLARATORY RELIEF

STATE OF NEW YORK

COUNTY OF CATTARAUGUS

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ss.:

Richard J. LeFeber, being duly sworn, deposes and says:

1. I am over the age of 18 years and reside at Cattaraugus, New York.
2. I am the Executive Director of the Cattaraugus Local Development Corporation (CLDC), the Petitioner.
3. I have held the position of Executive Director of CLDC since its creation in 1996.

As such, I am fully familiar with of the facts and circumstance surrounding this Petition.

THE CLDC

4. Since its founding in April 1996, the Mission of the CLDC has been to “insure the long-term viability of the area it serves by creating opportunities for economic and community development.”

THE SENATOR PAT MCGEE TRAIL

6. Through a network of volunteers and fundraising, the CLDC has included in its mission the establishment of the Senator Pat McGee Trail.

7. The Senator Pat McGee Trail is the first phase (12.14 miles of abandoned rail bed) to create a multi-use trail from Allegany State Park to Gowanda and Zoar Valley in Cattaraugus County, New York. The second phase has already commenced with the extension of this trail system to the edge of the Village of Cattaraugus.

8. As the New York & Lake Erie Railroad discontinues use of contiguous routes, the CLDC, or similar not-for-profit, will continue the construction of the trail, trail heads & park/s within the municipalities along the corridor.

9. On August 20, 2000, the CLDC acquired by Quit Claim Deed to a railroad corridor from the Cattaraugus County Industrial Development Agency (CCIDA). This railroad corridor ran from the Salamanca City Line to the Village of Cattaraugus, approximately 12.13+/- miles.

10. The purpose of this acquisition was to convert the railroad bed into a "Rails-to-Trails" in accordance with Federal legislation supporting these initiatives.

11. From 2000 to 2005 the CLDC developed a plan and design, while raising funds to build this project.

12. On National Trail Day, June 4, 2005 the "Rails-to-Trail" was dedicated and the Senator Pat McGee Trail was opened for the general public's enjoyment and use. The trail has been open continuously since that date 24/7/365. It is enjoyed by hikers, mountain bikers, bird watchers, naturalists, students, the handicapped, equestrians, snowmobilers, people on snowshoes and cross country skis and groups that just enjoy the quiet beauty of nature. Because it is a north-south corridor, it serves as a link for other trails to connect; it connects with the Bi-Centennial Bike Trail, the Fingers Lake Trail and the National North Country Scenic Trail and the NYS Snowmobile Trail System.

THE NEED FOR DECLARATORY RELIEF

13. In May 2019, while doing a title search of this property, it was discovered that the railroad corridor for the Senator Pat McGee Trail had not been properly abandoned by the CCIDA.

14. The organization known as Railroad Operator (New York & Lake Erie Railroad) had filed notice, been issued Docket #773, but never completed the process.

15. The CCIDA, believing their Railroad Operator had completed the process, transferred the railroad corridor to CLDC.

16. The railroad corridor deed to CLDC contained the following document description submitted to the Surface Transportation Board on September 6, 1996. "Notice, Reference: 49CFR Part 1152-Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903" from Milepost 414.1 (WC Jct., Salamanca, NY) to Milepost 426.5 (Cattaraugus, NY).

17. On or about August 8, 2019, I contacted the Surface Transportation Board (STB) on this matter, as the CLDC needs clear title to the railroad corridor.

18. I was advised by the STB that CLDC would need to complete the Abandonment Process.

19. In order to complete the STB Abandonment Process, I retained legal counsel specialized in Railroads Law. I want to rapidly and efficiently address and rectify this situation for all parties involved.

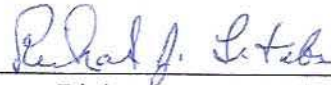
20. I certify and attest that at the time of acquisition of the railroad corridor for the Senator Pat McGee Trail, the CLDC believed that it had been properly abandoned by the CCIDA.

21. Pursuant to the 1983 Act, a railroad corridor is abandoned when rail service is discontinued.

22. In the approximate 20-years the CLDC has owned and managed this railroad corridor, no rail cars, locomotives or rail freight of any kind have ever been used or transported on or over the corridor.

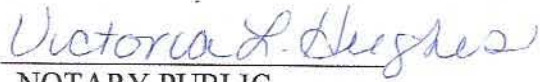
23. Accordingly, for all purposes, the railroad corridor owned by CLDC has and should be deemed abandoned.

WHEREFORE, it is requested, that the STB declare that the railroad corridor owned by CLDC for the Senator Pat McGee Trail be declared abandoned so that the residents of the State of New York can continue their enjoyment thereof for the purposes intended by the "rails to trails" federal program.



Richard J. LeFeber

Sworn to before me
this 21 day of February, 2020



NOTARY PUBLIC

VICTORIA L. HUGHES
Notary Public State of New York
No. 6179932
Qualified in Cattaraugus County
Commission Expires January 7, 2024

EXHIBIT A

[Map]

NEW YORK 1250

306

Average carloads per train.....	9.9
1973 operating information:	
Number of round trips per year.....	156
Estimated time per round trip (hours).....	5.0
Locomotive horsepower.....	1,600
Train crew size.....	4

Public Comment on Preliminary System Plan

Many witnesses stated that Lines 1246 and 1248 should have been considered as one line, and much of the information included in the discussion of Line 1246 applies to Line 1248 as well.

Westinghouse Electric Corp. wants this line retained as a clearance route for the shipment of giant-sized reactors, generators, and other heavy equipment.

It was pointed out that Lines 1246 and 1248 together form an important alternate route. Both of these segments were unaffected by Hurricane Agnes and played an essential role in the continued operation of the EL.

Information for Line-Transfer Decision

Revenue received by EL.....	\$589,735
Average revenue per carload.....	\$383
Variable (avoidable) cost of continued service:	
Cost incurred on the branch line.....	210,750
Cost of upgrading branch line to FRA Class I: (1/10 of total upgrading cost).....	0
Cost incurred beyond the branch line.....	280,338
Total variable (avoidable) cost.....	500,088
Net contribution: total.....	89,647
Average per carload.....	58

This line would require no upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.).

Testimony suggested that this line be combined with Line No. 1246. This action would involve cross-subsidization and was not taken.

Although service to the entire line generates a contribution, no traffic is generated in the last 4 miles which serve Dayton and Markhams.

Disposition

The portion of the B&SW Branch from Milepost 43.0 to Milepost 58.5 shall be offered for sale to the Chessie System, a profitable railroad operating in the region. If this offer is not accepted, the line shall be transferred to the Consolidated Rail Corp.

The portion of the B&SW Branch from Milepost 39.0 to Milepost 43.0 is not designated for transfer to the Chessie System or Consolidated Rail Corp. and is available for subsidy pursuant to section 304 of the Act. Public officials have recommended that certain rail

rights-of-way be used for other public purposes if rail service is discontinued. For line-specific recommendations, see section C of this appendix.

PORTION OF DUNKIRK BRANCH

USRA Line No. 1250

Erie Lackawanna



This portion of Dunkirk Branch extends from Salamanca (Milepost 413.9) to Cattaraugus, N.Y. (Milepost 428.1), a distance of 14.2 miles, in Cattaraugus County, N.Y. This line continues northwestward at Cattaraugus to Dunkirk (see Line No. 1249). At Salamanca, it connects with the EL Hornell-Youngstown line.

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:	
Little Valley.....	169
Cattaraugus.....	245
Total carloads generated by the line.....	414
Average carloads per week.....	8.0
Average carloads per mile.....	29.2
Average carloads per train.....	4.0
1973 operating information:	
Number of round trips per year.....	104
Estimated time per round trip (hours).....	5.0
Locomotive horsepower.....	1,000
Train crew size.....	4

Public Comment on Preliminary System Plan

A petition containing 134 signatures was submitted which stated that continued operation of this branch is vital to the social, economic, and environmental welfare of the Cattaraugus area.

Champion International Corp. (CIC) has a plant located on this line which receives plywood from the northwest and metals from steel mills in Ohio, West Virginia, Kentucky, Illinois, and Pennsylvania. CIC's Setterstix plant, at the same location, receives paper from manufacturing facilities in Canton, N.C. This traffic amounts to 180 carloads per year.

CIC suggested that, since no traffic originates between Little Valley and Salamanca, that segment of the line could be abandoned, leaving the track north of Little Valley in the ConRail System. This would require re-opening the track north of Cattaraugus to Dayton and keeping open the trackage between Dayton and South Dayton.

Gramco operates a feed mill and farm which depend upon rail service. Gramco shipped 101 carloads in 1973. Although Gramco's sales have been up 64 percent in the last 4 years, its carload shipments have not shown a corresponding increase, due largely to the use of larger cars.

Congressman James F. Hastings pointed out that if Champion International Corp. closed its plants at Cattaraugus, the jobs of 86 percent of the workers in that community would be affected. Congressman Hastings also charged that USRA based its figures on higher frequency of service than is actually maintained.

Information for Line-Transfer Decision

Revenue received by EL.....	\$109,188
Average revenue per carload.....	\$284

Variable (avoidable) cost of continued service:

Cost incurred on the branch line.....	125,164
Cost of upgrading branch line to FRA	
Class I: (1/10 of total upgrading cost)....	0
Cost incurred beyond the branch line....	73,136

Total variable (avoidable) cost.....	188,300
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Net contribution (loss): total.....	(89,112)
Average per carload.....	(215)

This line would require no upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.).

It was suggested that service to Cattaraugus and Little Valley should come from South Dayton. This would increase the length of the line to 22 miles. When the additional costs for rehabilitating the portion out of service are added, the line produces an even larger deficit. Also, service to this line is on an "as required" basis. For this level of traffic, twice a week service is appropriate.

Service to this line generated a loss of \$89,112 in 1973. Recovery of this loss would require approximately a threefold increase in traffic or an 81-percent rate increase.

Disposition

This portion of the Dunkirk Branch is *not* designated for transfer to the Chessie System or to Consolidated Rail Corp. and is available for subsidy pursuant to section 304 of the Act. Public officials have recommended that certain rail rights-of-way be used for other public purposes if rail service is discontinued. For line-specific recommendations, see section C of this appendix.

PORTION OF MAYBROOK-PHILLIPSBURG LINE

USRA Line No. 1700

Lehigh & Hudson River

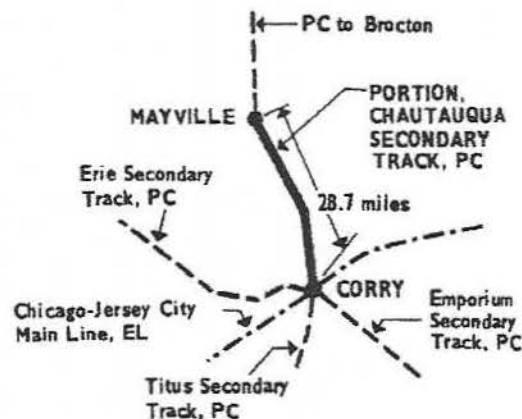
This portion of the Phillipsburg-to-Maybrook Line, extending from *Maybrook* (Milepost 0.0) to *Warwick, N.Y.* (Milepost 21.0), a distance of *21.0 miles*, in Orange County, N.Y., a line which was recommended for inclusion on page 649 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

INTERSTATE LINES

PORTION OF THE CHAUTAUQUA SECONDARY TRACK

USRA Line No. 249

Penn Central



This portion of the Chautauqua Secondary Track, formerly part of the Pennsylvania RR, extends from *Mayville, N.Y.* (Milepost 65.1), to *Corry, Pa.* (Milepost 93.8), a distance of *28.7 miles*, in Chautauqua County, N.Y. and Erie County, Pa. A continuation of this line

EXHIBIT B

[Order from U.S. District Court]

COPY

UNITED STATES DISTRICT
COURT, THE NORTHERN
DISTRICT OF OHIO, EASTERN
DIVISION

In the Matter

of

Erie Lackawanna Railway
Company, Debtor, in
proceedings for the
Reorganization of a
Railroad No. B72-2838

CERTIFIED COPY OF ORDER
AUTHORIZING SALE OF REAL ESTATE,
STRUCTURES, RAIL FACILITIES AND
OTHER APPURTENANCES IN THE COUNTY
OF CATTARAUGUS, STATE OF NEW YORK

Granted February 28, 1980
Recorded April 14, 1980 in
Liber of Deeds at page

RECITES: Thomas F. Patton
and Ralph S. Tyler, Jr., Trustees
of the Debtor's property,

petitioned the Court (Document No. 2642) for authority to sell
a portion of their former Dunkirk Branch extending approximately
14.062 miles in length from Milepost 428.10 in the Village of
Cattaraugus, New York, to Milepost 414.039 in the City of
Salamanca, New York, to the County of Cattaraugus Industrial
Development Agency, or its nominee, for a total cash consideration
of \$327,000.00.

Said real estate is subject to the first mortgage lien of
the Erie Railroad Company First Consolidated Mortgage and to
the second mortgage lien of the Erie Railroad Company General
Mortgage.

The Court finds that no objection has been raised to the
aforesaid Petition and that no party to this proceeding has
raised a substantial issue of law or fact which would necessitate
a hearing thereon. The Court, upon consideration of the
Petition of the Trustees for authority to sell real estate,
structures, rail facilities and other appurtenances, situate
in the County of Cattaraugus, State of New York, finds that the
proposed sale is in the best interests of the Debtor's Estate and
that the consideration offered the Debtor is fair and reasonable.

Accordingly:

1. The Trustees, or their duly authorized representatives, are authorized to convey a portion of their former Dunkirk Branch extending approximately 14.062 miles in length from Milepost 428.10 in the Village of Cattaraugus, New York, to Milepost 414.039 in the City of Salamanca, New York, free and clear of all liens, including judgment liens, mortgage liens, liens authorized by the Court and tax liens, including interest and penalties thereon, to the County of Cattaraugus Industrial Development Agency, or the nominee thereof, for a cash consideration of \$327,000.00 and to execute and deliver any documents necessary to complete the transaction.
2. All liens on the property conveyed pursuant to this Order, including judgment liens, mortgage liens, liens authorized by the Court, and tax liens, including interest and penalties thereon, shall be divested from the property and shall attach, according to their respective priorities, to the proceeds from the transaction authorized herein.
3. Upon consummation of the contemplated sale, the Trustees shall promptly deposit the proceeds from the transaction authorized herein, in the name of the Indenture Trustee under the Erie Railroad Company First Consolidated Mortgage, in compliance with the terms and conditions of Order 630 (Document No. 2474).

IT IS SO ORDERED.

135

Thomas F. Patton and
Ralph S. Tyler, Jr.,
Trustees of the Property
of Erie Lackawanna Railway
Company, having their
principal office in the
Midland Building, City of
Cleveland, County of
Cuyahoga, State of Ohio

to

County of Cattaraugus
Industrial Development
Agency, a municipal
agency with a place of
business at 303 Court
Street, Little Valley,
New York 14755
(No Search vs this Grantee)

CATTARAUGUS ABSTRACT BOOK

and other drainage facilities, buildings and hereditaments
thereon, together with all railroad tracts, ties and improvements
thereon, situate in the County of Cattaraugus in the State of
New York, which lands constitute part of the former railroad
of the party of the first part and more particularly described
as follows: Being that portion of the Grantors railroad and right
of way known as the Dunkirk Branch which commences in the City
of Salamanca, County of Cattaraugus, State of New York, at Mile
Post 414.03 (Valuation Chaining Station 31 + 04) as same is
portrayed on Erie Lackawanna Railway Valuation Map V 11 NY 1,
which point is the northerly boundary of lands conveyed to
Consolidated Rail Corporation by deed dated March 31, 1976,
EL-CRC-RP-14, recorded in Cattaraugus County Deed Book 787,
page 549, October 11, 1978, and which extends therefrom in a
generally northerly direction a distance of approximately 15.00
miles, through the City of Salamanca, Town of Salamanca, Town
of Mansfield, Town and Village of Little Valley, Town of New
Albion, and terminates in the Village of Cattaraugus, County

QUIT CLAIM DEED

Dated April 1, 1980
Acknowledged April 1, 1980
Recorded April 14, 1980 in
Liber 301 of Deeds at page 700
Consideration: \$327,000.00

CONVEYS: ALL of the right,
title and interest of party
of the first party in
and to all those lands
including cuts and fills
thereon, slopes, slope rights
and drainage ditches, culverts,

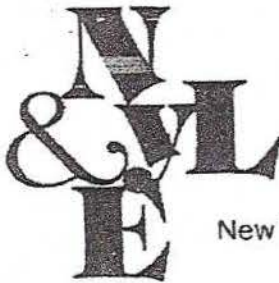
of Cattaraugus, and State of New York at Mile Post 428.10
(Valuation Chaining Station 74 + 43.0) as same is portrayed on
Erie Lackawanna Railway Valuation Map V 11 NY 15 which portion
of the Dunkirk Branch extends 66 feet width or wider, including
all lands between said points, and including all or portions
of the property conveyed by the instruments recorded as follows:

	COUNTY	DEED BOOK	PAGE	DATE RECORDED
1.	Cattaraugus	2	224	June 29, 1850
2.	"	2	351	Aug. 27, 1850
3.	"	2	351	Sept. 9, 1850
4.	"	27	161	Apr. 3, 1851
5.	"	27	35	Sept. 4, 1850
6.	"	27	46	Sept. 9, 1850
7.	"	27	45	Sept. 9, 1850
8.	"	28	1	Sept. 10, 1850
9.	"	27	208	Sept. 3, 1853
10.	"	27	38	Sept. 4, 1850
11.	"	27	37	Sept. 4, 1850
12.	"	27	36	Sept. 4, 1850
13.	"	27	33	Aug. 30, 1850
14.	"	27	27	Aug. 29, 1850
15.	"	27	173	Apr. 30, 1851
16.	"	27	23	Aug. 29, 1850
17.	"	27	24	Aug. 29, 1850
18.	"	27	26	Aug. 29, 1850
19.	"	27	30	Aug. 29, 1850
20.	"	27	22	Aug. 29, 1850
21.	"	27	22	Aug. 29, 1850
22.	"	27	34	Sept. 4, 1850
23.	"	27	71	Nov. 1, 1850
24.	"	28	1	Nov. 1, 1850
25.	"	27	77	Nov. 1, 1850
26.	"	27	49	Sept. 9, 1850
27.	"	27	48	Sept. 9, 1850
28.	"	27	25	Aug. 29, 1850
29.	"	27	162	Apr. 3, 1851
30.	"	27	76	Nov. 1, 1850
31.	"	27	29	Aug. 29, 1850
32.	"	27	28	Aug. 29, 1850
33.	"	27	50	Sept. 9, 1850
34.	"	27	100	Dec. 14, 1850
35.	"	27	101	Dec. 14, 1850
36.	Allegany	8	205	Nov. 17, 1851
37.	Cattaraugus	27	189	Jan. 29, 1852
38.	"	30	64	Feb. 13, 1852
39.	"	27	131	Jan. 30, 1851
40.	"	27	70	Oct. 21, 1850
41.	"	27	47	Sept. 9, 1850
42.	"	27	178	July 3, 1851
43.	"			
44.	"			

Filed in Office of Secretary of Grantor.

EXHIBIT C

[September 6, 1996 Notice]



New York & Lake Erie Railroad • P.O. Box 309, Gowanda, NY 14070 • (716) 532-5242
Fax (716) 532-9128

Notice

Date: September 6, 1996

Reference: 49 CFR Part 1152-Abandonment and Discontinuance of
Rail Lines and Rail Transportation Under 49 U.S.C. 10903

Notice is hereby given to the parties named below that:

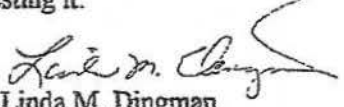
New York & Lake Erie Railroad, address of 50 Commercial Street, Gowanda, New York 14070, will be filing for Abandonment of a portion of the line it currently operates described as follows:

A portion of USRA Line 1250 extending from Milepost 426.5 (Cattaraugus, NY) east to Milepost 414.1 (WC Jct., Salamanca, NY). This 12.4 miles of single track railroad has not been used for rail service since 1990, due to track conditions and the fact that there were no shippers on this portion of railroad. The proposed abandonment is located in the County of Cattaraugus, New York.

Subpart F-Exempt Abandonments and Discontinuances of Service and Trackage Rights is the procedure being used.

The approximate date that the Notice of Exemption will be filed with the U. S. Department of Transportation's Surface Transportation Board will be September 17, 1996.

Based on information in our possession, the line described above does not contain federally granted rights-of-way. Any documentation in the Railroad's possession will be made available promptly to those requesting it.


Linda M. Dingman
Vice President



MEMBER

LIST OF ADDRESSEES:

Department of Defense, MTMC Transportation Engineering Agency,
720 Thimble Shoals Blvd., Suite 130, Newport News, VA 23606-2574

National Park Service, National Center for Recreation & Conservation,
P.O. Box 37127, Suite 490, Mail Stop NC 490, Washington, DC 20013-7127

U.S. Dept. of Agriculture, Chief of the Forest Service, 201 14th St., SW,
Washington, DC 20250

National Park Service, Land Resources Division, 1100 Ohio Drive, Washington, DC
20044

Commissioner of Transportation, NYS Dept. of Transportation, 1220 Washington Ave.,
State Campus, Albany, NY 12232

NOTES ON EXEMPT ABANDONMENT:

1. THE PROVISIONS OF 1152.27 (FINANCIAL ASSISTANCE PROCEDURES) AND

1152.28 (PUBLIC USE PROCEDURES) ARE APPLICABLE.

These are filed by others after this is published in Federal Register.

2. CARRIER MUST CERTIFY THAT NO LOCAL TRAFFIC HAS MOVED OVER THE LINE FOR FOR AT LEAST 2 YEARS AND THAT ANY OVERHEAD TRAFFIC ON THE LINE CAN BE REROUTED OVER OTHER LINES, AND THAT NO FORMAL COMPLAINT FILED BY A USER OF RAIL SERVICE ON THE LINE HAS BEEN DECIDED IN FAVOR OF COMPLAINTANT OR IS PENDING.

3. A "NOTICE" MUST BE FILED TO USE THIS CLASS EXEMPTION. PROCEDURES ARE SET FORTH IN 1152.50(D): (WHICH FOLLOWS)

- A) 10 DAYS PRIOR TO FILING A "NOTICE OF EXEMPTION", RAILROAD MUST NOTIFY IN WRITING THE FOLLOWING:

- 785*
- 1) PUBLIC SERVICE COMMISSION IN NYS (WHERE THE LINE WILL BE ABANDONED.)
 - ✓ 2) DEPT. OF DEFENSE (MILITARY TRAFFIC MANAGEMENT COMMAND, TRANSPORTATION ENGINEERING AGENCY, RAILROADS FOR NATIONAL DEFENSE PROGRAM)
 - ✓ 3) NATIONAL PARK SERVICE, LAND RESOURCES DIVISION
 - ✓ 4) U. S. DEPT. OF AGRICULTURE, CHIEF OF THE FOREST SERVICE;
 - ✓ 5) NATIONAL PARK SERVICE, RECREATION RESOURCES ASSISTANCE DIVISION

THIS NOTICE SHALL NAME THE RAILROAD,

DESCRIBE THE LINE INVOLVED,

INDICATE THAT THE EXEMPTION PROCEDURE IS BEING USED,

INCLUDE THE APPROX. DATE THAT THE NOTICE OF EXEMPTION WILL BE FILED WITH THE COMMISSION- SURFACE TRANSPORTATION BOARD.

Doc. No. # 7 11 days from now

NOTICE HAS TO INCLUDE THE FOLLOWING STATEMENT:

"BASED ON INFORMATION IN OUR POSSESSION, THE LINE ~~(DOES)~~ (DOES NOT) CONTAIN FEDERALLY GRANTED RIGHTS-OF-WAY. ANY DOCUMENTATION IN THE RAILROAD'S POSSESSION WILL BE MADE AVAILABLE PROMPTLY TO THOSE REQUESTING IT."

4. THE RAILROAD MUST FILE A VERIFIED NOTICE USING ITS APPROPRIATE ABANDONMENT DOCKET NUMBER AND SUBNUMBER (FOLLOWED BY THE LETTER "X") WITH THE COMMISSION AT LEAST 50 DAYS BEFORE THE ABANDONMENT OR DISCONTINUANCE IS TO BE CONSUMMATED.

Sub H. 1 X

5. THE NOTICE SHALL INCLUDE THE PROPOSED CONSUMMATION DATE, THE CERTIFICATION REQUIRED IN 1152.50(B) (SEE NO. 2 ABOVE)

John + Sam

-2-

6. THE INFORMATION REQUIRED IN 1152.22(A)(1) THROUGH (5) AND (8). (WHICH IS)

- A. EXACT NAME OF APPLICANT *Nyle*
- B. WHETHER APPLICANT IS A COMMON CARRIER BY RAILROAD SUBJECT TO THE ICC ACT. *yes.*
- C. WHETHER THE CARRIER WHICH OWNS OR OPERATES THE LINE OF RAILROAD TO BE ABANDONED IS A PART OF ANY RAILROAD SYSTEM. *No*
- D. RELIEF SOUGHT (ABANDONMENT OF LINE OR DISCONTINUANCE OF SERVICE)
- E. DETAILED MAP OF THE SUBJECT LINE ON A SHEET OF PAPER NOT LARGER THAN 8-X 10-1/2", DRAWN TO SCALE, AND WITH THE SCALE SHOWN THEREON. THE MAP MUST SHOW, IN CLEAR RELIEF, THE EXACT LOCATION OF THE RAIL LINE TO BE ABANDONED AND ITS RELATION TO OTHER RAIL LINES IN THE AREA, HIGHWAYS, WATER ROUTES, AND POPULATION CENTERS. *Copy of Guadalupe map*
8. ANY IMPORTANT CHANGES IN TRAIN SERVICE UNDERTAKEN IN THE 5 CALENDAR YEARS IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION. *1/90*

7. INFORMATION REQUIRED IN 1152.22(E)(5), WHICH IS:

STATEMENTS OF WHETHER THE PROPERTIES PROPOSED TO BE ABANDONED ARE SUITABLE FOR USE FOR OTHER PUBLIC PURPOSES, INCLUDING ROADS OR HIGHWAYS, OTHER FORMS OF MASS TRANSPORTATION, CONSERVATION, ENERGY PRODUCTION, OR TRANSMISSION, OR RECREATION.

IF THE APPLICANT IS AWARE OF ANY RESTRICTION ON THE TITLE TO THE PROPERTY, INCLUDING ANY REVERSIONARY INTEREST, WHICH WOULD AFFECT THE TRANSFER OF TITLE OR THE USE OF PROPERTY FOR OTHER RAIL PURPOSES, THIS SHALL BE DISCLOSED.

8. INFORMATION REGARDING THE LEVEL OF LABOR PROTECTION. *No employees were affected.*
9. A CERTIFICATE THAT THE NOTICE REQUIREMENTS OF 1152.50(D) HAS BEEN COMPLIED WITH. (SEE NUMBER 3 OF THIS SUMMARY);
10. CERTIFICATE THAT THE NOTICE REQUIREMENTS OF 1105.11 HAVE BEEN COMPLIED WITH. (FIND OUT WHAT THESE ARE)

order form

EXHIBIT D

[Release from NYS]



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
<http://www.dot.state.ny.us>

JOSEPH H. BOARDMAN
COMMISSIONER

GEORGE E. PATAKI
GOVERNOR

March 20, 2000

County of Cattaraugus Industrial Development Agency
P.O. Box 1749
3 East Washington Street
Ellicottville, NY 14731

Attention: Norman P. Leyh, Executive Director

Dear Mr. Leyh:

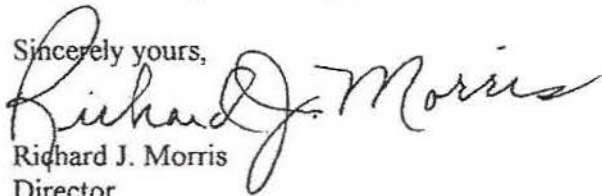
RE: Request for Release of Preferential Rights
12.13+/- miles, Town/City of Salamanca to Town of New Albion
Cattaraugus County
MP 414.45 to MP 426.58
N.Y.S.D.O.T. CCIDA File #: 1

Enclosed an executed original Release of the Preferential Right of Acquisition for the noted property.

However, please note this release is issued subject to the Department of Environmental Conservation's retention of their right-of-way access to cross the former railroad ROW at their facilities in Little Valley.

You may arrange to have this Release recorded in the County Clerk's office.

Sincerely yours,


Richard J. Morris
Director
Real Estate Division

Att:
RJM:jjb

cc: B. Rowback, Regional Director, Region 5
D.T. Relyea, Freight & Economic Dev. Div., 7A-303, w/att.

DEPT. OF TRANSPORTATION
RECEIVED

MAR 20 2000

FREIGHT & ECONOMIC DEV. DIV.
1000

cc Fred Haffa 3/22

RELEASE BY COMMISSIONER OF TRANSPORTATION
OF PREFERENTIAL RIGHT TO ACQUIRE PROPERTY
ABANDONED FOR RAILROAD TRANSPORTATION PURPOSES

GREETINGS, KNOW YE ALL MEN BY THESE PRESENTS, that

WHEREAS, certain property acquired for the purpose of operating a railroad thereon and which is owned by the County of Cattaraugus Industrial Development Agency, and is located within this State is to be abandoned for railroad transportation purposes, and

WHEREAS, this railroad property above mentioned is further described as follows:

All that certain piece or parcel of land comprising the property located at milepost 414.95 at the Town/City of Salamanca boundary line and moves through the Town/Village of Little Valley, Town of Mansfield, and the Town of New Albion, and terminates at milepost 426.58 in the County of Cattaraugus, State of New York, more specifically referred to as a 12.13+/- miles segment and more specifically delineated on the attached map denoted as exhibit "A".

However, this release is issued subject to the Department of Environmental Conservation's retention of their right-of-way access to cross the former railroad ROW at their facilities in Little Valley.

WHEREAS, Section 18 of the Transportation Law, added by Chapter 827 of the Laws of 1971 as amended, grants to the Commissioner of Transportation of the State of New York the preferential right to acquire, or to authorize other interested State or Local agencies of government, metropolitan or regional transportation authorities to exercise the preferential right to acquire property abandoned for railroad transportation purposes, and

WHEREAS, the Commissioner of Transportation of the State of New York has determined that there is no future use for the above mentioned property for transportation purposes, as such purposes are set forth in the Transportation Law, the Highway Law or the Canal Law, and

WHEREAS, the Commissioner of Transportation of the State of New York has not authorized any other State or local agency of government or a metropolitan or regional transportation authority to exercise its preferential right of acquisition for public transportation purposes, as set forth in the Transportation Law.

WHEREFORE, the Commissioner of Transportation of the State of New York for and in consideration of the sum of One (1) Dollar, lawful money of the United States of America, receipt of which is hereby waived, hereby releases pursuant to Section 18 of the Transportation Law, added by Chapter 827 of the Laws of 1971 as amended, the preferential right to acquire the aforementioned property which was acquired for the purpose of operating a railroad thereon and which has been abandoned for railroad transportation purposes.

THIS release is limited to a release of any preferential acquisition rights granted under Section 18 of the Transportation Law. No confirmation, assurance or guarantee of the accuracy, authenticity, nature or extent of any right, title, interest or description in, of or to the property named and/or described herein is intended, and no release of any right, title or interest of the State of New York in and to any such property, which might otherwise exist, is made hereby.

MAR 20 2000

DATE



RICHARD J. MORRIS

Director, Real Estate Division

(This instrument executed pursuant to Official Order No. 1543 of the Department of Transportation dated October 27, 1989.)

STATE OF NEW YORK)

) SS.:

COUNTY OF ALBANY)

On this 20th day of March, 2000, before me personally came RICHARD J. MORRIS, to me known and known to me to be Director, Real Estate Division of the Department of Transportation, the person described as such in and who executed the foregoing instrument and he duly acknowledged to me that he executed same as such Director, Real Estate Division, pursuant to the statute in such case provided.

ROLAND E. RIVERS
Notary Public in the State of New York
No. 8589150
Qualified in Albany County
My Commission Expires October 31, 2000



