

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
October 15, 2021
Part of
Public Record

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON
COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

CONRAIL’S REPLY TO JERSEY CITY’S “OBJECTION AND EXCEPTION”

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October 15, 2021

CONRAIL’S REPLY TO JERSEY CITY’S “OBJECTION AND EXCEPTION”

Conrail takes no position on whether the Board should accept into the record the October 12, 2021, submission from the City of Jersey City, Rail to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, Jersey City). Conrail has previously addressed the many mischaracterizations of facts and law that Jersey City repeats in the submission. However, Jersey City’s submission raises two points that Conrail has not previously addressed. First, Jersey City mischaracterizes the basis for OEA’s conclusion that removal of the Board’s jurisdiction over the Embankment could not be an “adverse effect” under the National Historic Preservation Act. *See* Jersey City Submission at 3–4. OEA’s position is set forth in detail in OEA’s letter to Jaime Loichinger of the Advisory Council on Historic Preservation, dated February 19, 2020 (EO-3311).

Second, Jersey City mischaracterizes the Board’s decision in *Eastside Community Rail, LLC—Acquisition & Operation Exemption—GNP RLY Inc.*, FD 35692 (STB served Sept. 29, 2021). Jersey City misleadingly combines snippets of language from decision to claim Board precedent holds that “‘any transfers’ without the Board’s prior authority ‘are void’ regardless whether they ‘were valid under state law.’” Jersey City Submission at 5 (purporting to quote *Eastside* at 4).¹ *Eastside* was a fact-specific decision that clarified the process for unwinding a transaction where the parties had obtained an exemption based on certain material misleading representations to the Board, and where no party sought to remedy the misrepresentations or obtain after-the-fact authority. *Eastside* at 4. *Eastside* did not establish a general rule about voiding transactions. Moreover, the facts here are nothing like the facts in *Eastside*. As the record shows, Conrail legitimately believed it did not need Board authority to abandon the

¹ The phrase “any transfers” does not appear anywhere in the *Eastside* decision.

Harisimus Branch,² but when the Board disagreed, Conrail commenced abandonment proceedings.

Respectfully submitted,

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² See, e.g., Conrail's Reply Submission Regarding Applicability of Section 110(K) of NHPA at 2–5 (filed July 19, 2021).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2021, I caused a copy of the foregoing document to be served by email or first-class mail, postage prepaid, on all parties of record in Docket No. AB 167 (Sub-No. 1189X), Docket No. AB 55 (Sub-No. 686X), and Docket No. AB 280 (Sub-No. 306X).

/s/ Michael L. Rosenthal