

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36710

RICHMOND WATERFRONT INDUSTRIAL PARK, LLC—
PETITION FOR DECLARATORY ORDER

Decided: May 9, 2024

On July 28, 2023, Richmond Waterfront Industrial Park, LLC (RWIP), filed a petition for a declaratory order requesting that the Board declare that a purported railroad easement (Easement) owned by the Philadelphia Belt Line Railroad (PBL) and traversing RWIP's property, is not, and has never been, subject to the Board's jurisdiction. (RWIP Pet. 2.) Specifically, RWIP seeks a declaration that the track located within the Easement is neither a rail line subject to 49 U.S.C. § 10901 nor excepted side track subject to 49 U.S.C. § 10906, but rather private track outside the Board's jurisdiction. (*Id.*) As explained below, the Board will institute a declaratory order proceeding and establish a procedural schedule.

RWIP explains that the petition follows a ruling by the Court of Common Pleas in Philadelphia, Pa., in RWIP's action to determine whether the Easement could be extinguished under Pennsylvania law. (*Id.*) The court held that it did not have subject matter jurisdiction over RWIP's claim because the ICC Termination Act of 1995 preempts state law when it comes to determining if a railroad has abandoned its tracks. (*Id.* at 3; *see also id.*, Ex. A.) The court instructed RWIP to bring the matter to the Board. (RWIP Pet. 3.)

RWIP then appealed the lower court's decision to the Superior Court of Pennsylvania and applied to stay the appeal so it could request that the Board issue a declaratory order concerning the jurisdictional status of the Easement and its track, or, in the alternative, issue guidance to the Superior Court on the jurisdictional question. (*Id.* at 3-4; *see also id.*, Ex. B.) RWIP's application for a stay was denied, (*see* PBL Letter 1, 3, Sept. 14, 2023), and on March 25, 2024, the Superior Court of Pennsylvania affirmed the Court of Common Pleas' decision, (*see* RWIP Suppl. 2, Apr. 9, 2024; *id.*, Attach. 1). RWIP reports that it has filed with the Supreme Court of Pennsylvania, Eastern District, a petition for allowance of appeal of the Superior Court's decision. (RWIP Letter 1, Apr. 29, 2024.)

RWIP argues that the Superior Court's decision reinforces the need for the Board to provide guidance in this matter. (RWIP Suppl. 2, 11, Apr. 9, 2024.) PBL argues that the Board should dismiss RWIP's petition, or in the alternative, that the Board should refrain from acting on RWIP's petition until the state court proceedings have concluded. (PBL Reply 3, 11, Aug. 17, 2023; PBL Letter 1-2, Sept. 14, 2023; PBL Reply 1-2, Apr. 11, 2024.)

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. Pursuant to the Board's authority under § 554(e) and § 1321, a proceeding will be instituted to resolve whether the track at issue is subject to the Board's jurisdiction, and if so, whether it is main line track under 49 U.S.C. § 10901 or excepted track under 49 U.S.C. § 10906. See, e.g., Jersey City v. Consol. Rail Corp., 668 F.3d 741, 743 (D.C. Cir. 2012) (stating that ordinarily the Board decides whether tracks qualify as a rail line and thus require abandonment authorization); see also Matter of Metro. Transp. Auth., 823 N.Y.S.2d 88, 91 (N.Y. App. Div. 2006) (noting that where questions exist as to whether certain railroad track is spur, and whether the track's nonuse is sufficient to result in an abandonment, "[s]uch matters are properly addressed to the [Board]").

Procedural Schedule. The following procedural schedule will be adopted and will include a period for discovery. The Board typically does not provide for discovery in declaratory order proceedings. See, e.g., Metro Council—Pet. for Declaratory Ord., FD 36178, slip op. at 4 (STB served May 22, 2018). Here, however, RWIP and PBL have both requested discovery, (RWIP Pet. 5 n.13; PBL Reply 11 n.27, Aug. 17, 2023), and additional facts obtained in discovery may assist the Board in determining whether the track is subject to the Board's jurisdiction.

Close of discovery	August 7, 2024
RWIP opening statement	September 6, 2024
PBL reply statement	October 7, 2024
RWIP rebuttal statement	October 28, 2024

It is ordered:

1. A declaratory order proceeding is instituted.
2. The procedural schedule described above is adopted.
3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.