

SERVICE DATE – SEPTEMBER 24, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36768

CITY OF PHILADELPHIA—PETITION FOR DECLARATORY ORDER

Digest:¹ In this decision, the Board grants the City of Philadelphia’s request for a declaratory order finding that the Board no longer has jurisdiction over the property underlying a portion of the Philadelphia & Reading Railroad Company’s former Ninth Street Branch.

Decided: September 24, 2025

On April 19, 2024, the City of Philadelphia (City) petitioned the Board to issue a declaratory order stating that: 1) the right to operate a rail line over property that previously supported the Ninth Street Branch of the Philadelphia & Reading Railroad Company (Reading Railroad) has been abandoned; 2) the Board no longer has jurisdiction over the property; and 3) the successor to Reading Railroad, Reading International, Inc., (Reading), has no right to use the property for railroad purposes because it is a non-carrier and lacks authority to operate a rail line. (Pet. 1.) For the reasons explained below, the Board will grant the City’s petition for a declaratory order confirming that the Ninth Street Branch has been abandoned, that the Board has no jurisdiction over the property, and that federal preemption under the ICC Termination Act of 1995 (ICCTA) does not prevent condemnation of the property under state law.

BACKGROUND

This case involves property underlying a former Reading Railroad rail line known as the Ninth Street Branch. (Pet. 1.) A portion of the Ninth Street Branch ran through downtown Philadelphia, Pa., from milepost 1.6, south of Jefferson Street, to milepost 0.0, at Reading Terminal.² Conrail Aban. in Phila., Pa., AB 167 (Sub-No. 479), slip op. at 1 (ICC served June 24, 1983). The real property underlying a portion of that line segment included a viaduct

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² For convenience, in this decision the “Ninth Street Branch” refers to the segment at issue in this case, from milepost 0.0 to milepost 1.6, even though the rail line known by that name extended beyond milepost 1.6.

that supported the tracks, referred to herein as the Viaduct Property.³ The line segment on which the Viaduct Property is located was designated for continued operation and transfer to Conrail as part of the Final System Plan (FSP) in 1976.⁴ U.S. Ry. Ass'n, Final System Plan, Vol. I, 281, 332 (July 26, 1975).⁵ Reading and the City agree that, as a result of the 1976 FSP transfer, Conrail received an easement to operate over the Ninth Street Branch, and Reading owns the underlying real property. (Reading Reply to Pet. 5-7, 12; City Mot. to Strike 12). The Board's predecessor agency, the Interstate Commerce Commission (ICC), later authorized Conrail to abandon the Ninth Street Branch in Conrail Abandonment, AB 167 (Sub-No. 479), slip op. at 1.⁶ On April 30, 1984, Conrail advised the ICC that it had "implemented the authority granted" in the agency's order. Conrail Letter 1, Conrail Aban., AB 167 (Sub-No. 479).⁷

According to the City, sometime after 1983, Reading agreed to the demolition of the entire southern portion of the viaduct structure to enable the construction of the Pennsylvania Convention Center. (Pet. 3.) The City states, and Reading does not dispute, that the Viaduct Property is physically blocked from connecting to other rail lines or stations and that a city park has been constructed on an abandoned segment of the connecting rail line. (*Id.*) The City asserts that today the Viaduct Property is "a dilapidated, overgrown, and hazardous blight on nearby neighborhoods." (*Id.*) In furtherance of its efforts to expand the park, the City wishes to acquire the Viaduct Property, which continues to be owned by Reading—the successor to Reading Railroad—through its subsidiary RCPA, LLC. (Pet. 3; Reading Reply 1.) The City states that Reading opposes the City's plan and that the City therefore intends to acquire the Viaduct Property by condemnation. (Pet. 3.) According to the City, Reading has indicated that it will challenge the City's condemnation action on the ground that the Viaduct Property is subject to the Board's jurisdiction and therefore the condemnation action is preempted. (*Id.* at 5.)

³ The parties never identify the mileposts or specific location of the Viaduct Property. Based on publicly available maps, it appears that the remaining parts of the viaduct extend from approximately Vine Street to Fairmount Avenue in Philadelphia.

⁴ Congress passed the Regional Rail Reorganization Act of 1973 (3-R Act), Pub. L. No. 93-236, 87 Stat. 985 (1974) (codified as amended at 45 U.S.C. §§ 701-793), to reorganize the assets of various financially distressed railroads. Consol. Rail Corp. v. STB (Conrail), 571 F.3d 13, 14 (D.C. Cir. 2009). The 3-R Act established the United States Railway Association (USRA) to carry out the reorganization and created Conrail to own and operate the reorganized rail assets. *Id.* In July 1975, the USRA published the FSP designating the rail properties to be transferred to Conrail. *Id.* at 15. In March 1976, a United States district court, known as the "Special Court," issued orders conveying to Conrail the rail properties designated for transfer in the FSP. *Id.*

⁵ The Ninth Street Branch was coded as Line 0328 in the FSP. The segments from "Spring Garden" (milepost 1.0) to "North Broad Street" (milepost 2.9) and from "Reading Term" (milepost 0.0) to "Spring Garden" (milepost 1.0) were both designated for transfer to Conrail. U.S. Ry. Ass'n, Final System Plan, Vol. I, 281, 332 (July 26, 1975).

⁶ A copy of the ICC's 1983 decision is attached to the City's petition as Exhibit B.

⁷ A copy of Conrail's 1984 letter to the ICC is attached to the City's petition as Exhibit C.

The City explains in its petition that the question of whether the Viaduct Property is subject to the Board’s jurisdiction was addressed in a federal district court decision in Scioli Turco v. Philadelphia & Reading Railroad, No. 21-563 (E.D. Pa. Nov. 14, 2023). (Pet. 4.)⁸ In Scioli Turco, two neighborhood groups, Scioli Turco, Inc. and 915 Spring Garden Associates, LP, sought to acquire a former Reading Railroad station that once served the Ninth Street Branch, pursuant to the Abandoned and Blighted Property Conservatorship Act, 68 Pa. C.S.A. § 1101 et seq.⁹ (Pet., Ex. D at 1-2.) The court determined that Conrail’s ICC-authorized abandonment of its interests in the Ninth Street Branch was insufficient to remove the Board’s jurisdiction. (*Id.*, Ex. D at 8-10.) Explaining that the proceeding took place under “a specific regime wholly distinct from the more standard procedures outlined in ICCTA,” the court determined that Conrail’s 1983 abandonment had no effect on the Board’s jurisdiction over the Ninth Street Branch because Conrail only owned, and thus only abandoned, an easement to operate the rail line. (*Id.*, Ex. D at 11.) According to the court, because Reading never sought abandonment authority for the former Ninth Street Branch, efforts to acquire the land via state law condemnation proceedings were preempted by ICCTA. (*Id.*, Ex. D at 8, 10-11.) The court dismissed the case without prejudice, noting that the case could be re-filed “if and when the STB approves the abandonment of the Ninth Street Branch.” (*Id.*, Ex. D at 12-13.) The City—which was not a party in the Scioli Turco case—argues that the district court’s determination was incorrect because the Ninth Street Branch was removed from the national transportation system when Conrail consummated the abandonment authority it had received from the ICC in 1983. (Pet. 5-8.) According to the City, the interests that Reading retained in the Viaduct Property are not sufficient to sustain continued federal regulatory jurisdiction and, therefore, ICCTA would not preempt an attempt to condemn the property under state law. (*Id.* at 7.)

Reading filed a reply in opposition to the City’s petition on June 3, 2024,¹⁰ arguing that the Viaduct Property remains under the Board’s jurisdiction. According to Reading, Conrail received only an easement to provide freight service over the Ninth Street Branch and that Conrail’s abandonment only “ended federal jurisdiction over Conrail’s easement for its operations.” (Reading Reply to Pet. 8-10.) Reading contends that the Viaduct Property remains subject to the Board’s jurisdiction and will remain so until Reading formally abandons its remaining interest pursuant to 49 U.S.C. § 10903. (Reading Reply to Pet. 7, 11.) Reading further argues that the Board should deny the City’s petition because the court in Scioli Turco already ruled that the Board still has jurisdiction over the Viaduct Property. (*Id.* at 12.) According to Reading, the currently unusable condition of the Ninth Street Branch and Reading’s status as a non-carrier are irrelevant because Reading has not formally abandoned the Viaduct Property. (*Id.* at 14-16.)

⁸ A copy of the decision is attached to the City’s petition as Exhibit D.

⁹ The property at issue in that case, 901 Spring Garden Street in downtown Philadelphia, is located adjacent to the Viaduct Property. (Pet., Ex. D at 1.)

¹⁰ Reading’s reply was originally due on May 9, 2024, but it filed for and was granted an extension of the due date until June 4, 2024. City of Philadelphia—Pet. for Declaratory Ord., FD 36768, slip op. at 1 (STB served May 1, 2024.)

The City submitted a motion for leave to file a reply to Reading's reply on June 21, 2024, and Reading moved to strike the City's proposed reply on June 25, 2024. Additionally, on August 1, 2024, Eric Strohmeier filed a notice of intent to participate, a reply, and a motion to dismiss. The City moved to strike Strohmeier's motion on August 21, 2024, and Reading filed a reply to the City's motion to strike on September 6, 2024. On March 6, 2025, the City submitted a letter inquiring whether the Board requires any additional information from the parties. (City Letter 1.) Each of these filings is addressed in more detail in the Preliminary Matters section below.

Letters in support of the City's position were filed by Philadelphia Councilmember Mark F. Squilla and the Board of Directors of the Callowhill Neighborhood Association (CNA), a Philadelphia community organization. (Squilla Letter 1, May 28, 2024; CNA Letter 1, June 17, 2024.) Letters were also filed by U.S. Rep. Brendan Boyle and U.S. Sen. John Fetterman, who note the "significant land use implications" in this case and ask the Board to make efforts to reach a speedy determination in this proceeding. (Boyle Letter 1, Dec. 3, 2024; Fetterman Letter 1, Dec. 10, 2024.)

PRELIMINARY MATTERS

City's Surreply.

On June 21, 2024, the City filed a motion for leave to file a reply to Reading's reply, and simultaneously filed the City's proposed reply. The City argues that its reply to Reading's reply should be accepted into the record so that the City can address unanticipated arguments and correct mischaracterizations of historical fact. (City Mot. for Leave 2-3.) On June 25, 2024, Reading filed with the Board an "opposition" to the City's motion for leave and motion to strike the City's reply to the reply. Reading argues that the City's motion for leave should be denied because its proposed reply raises no new arguments and lacks evidentiary support. (Reading Mot. to Strike 2.) Reading's motion to strike also includes substantive responses to arguments in the City's proposed reply involving the merits of the case. (*Id.* at 6-11.)

The Board's regulations do not permit "replies to replies," 49 C.F.R. § 1104.13(c), although the Board had often accepted such filings in the past. See Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025) (explaining that § 1104.13(c) will be more strictly enforced going forward to promote the orderly and efficient administration of cases). The City's proposed reply relies on arguments, information, and documents that were previously available to the City and could have been provided in the City's petition. Accordingly, the City's motion for leave to file a reply to a reply will be denied and its reply to the reply will not be accepted into the record. As such, Reading's opposition and motion to strike the City's reply to the reply is rejected as moot and will also not be accepted into the record.

Strohmeyer Motion to Dismiss.

On August 1, 2024, Strohmeyer filed a notice of intent to participate, a reply, and a motion to dismiss. Strohmeyer argues that the Board lacks subject matter jurisdiction to decide whether the Board has jurisdiction over the Viaduct Property. (Strohmeyer Mot. to Dismiss 1.) According to Strohmeyer, that question turns on an interpretation of the deed (the Deed) by which the property was transferred to Conrail under the FSP.¹¹ (Strohmeyer Mot. to Dismiss 24-25.) Specifically, Strohmeyer speculates, based on the language of the Deed, that Reading could have retained sufficient interest in certain pieces of the property to retain a residual common carrier obligation. (*Id.* at 24-25.) He argues that, pursuant to Consolidated Rail Corp. v. STB (Conrail), 571 F.3d 13 (D.C. Cir. 2009), the District Court for the D.C. Circuit—as the successor to the Special Court—has original and exclusive jurisdiction to decide what interests Reading retained in the property. (*Id.* at 2-13, 24.)

The City on August 21, 2024, filed a motion to strike Strohmeyer’s motion to dismiss (or, in the alternative, a reply to the motion to dismiss). The City argues that Strohmeyer has no interest in the Viaduct Property, claims no stake in the outcome of the proceeding, did not seek leave to intervene, and filed out of time. (City Mot. to Strike 2-4 and n.3.) The City further argues that the Board should deny Strohmeyer’s motion to dismiss because the City and Reading do not dispute what interests Reading possessed at any given time. (City Mot. to Strike 2-3, 4-5, 8, 12.) Thus, according to the City, resolving this case does not require the Board to interpret the FSP, court orders conveying property to Conrail, or the type of interest Reading owned in the property at any given time. (City Mot. to Strike 4-5, 10-12.)¹²

The Board has long held that intervention is discretionary, *see, e.g., Knauf Fibre Glass GmbH v. Alton & S. Ry.*, NOR 39739 (ICC served May 9, 1986), and Strohmeyer has not demonstrated an interest that would warrant the Board permitting his participation as a party over the City’s objection, *see* 49 C.F.R. § 1101.2(d). *See also NRC v. Texas*, 605 U.S. 665, 677-78 (2025). The City’s motion to strike will be granted, and Strohmeyer’s motion to dismiss will be

¹¹ The City submitted a copy of the Deed conveying the Ninth Street Branch (among other lines) from Reading to Conrail with its reply to Reading’s reply. (City Reply, Ex. A, June 21, 2024.) Although Strohmeyer asks the Board to dismiss this case for lack of jurisdiction (Strohmeyer Mot. to Dismiss 1), he asks the Board to accept into the record the City’s reply to Reading’s reply to the petition for declaratory order, (*id.* at 15-16). According to Strohmeyer, the Deed included as an exhibit to the City’s reply conclusively establishes the Board’s lack of jurisdiction and its admission into the record would thus accelerate the resolution of the case. (*Id.* at 16.) As discussed, the City’s motion for leave to file a reply to Reading’s reply will be denied.

¹² In support of its position, the City’s motion to strike summarizes the disputed facts and arguments in this case. (City Mot. to Strike 5-10.) Reading submitted a reply to the City’s motion to strike Strohmeyer’s motion to dismiss on September 6, 2024. However, Reading’s reply does not address the merits of Strohmeyer’s petition but merely responds to the City’s summarized arguments on the merits. (Reading Reply to City Mot. to Strike 1, Sept. 26, 2024.) The Board will not strike Reading’s reply to the City’s motion to strike, as it was permitted under the Board’s rules, but notes that the filing added little value to the record.

stricken from the record. Nonetheless, as discussed below, the Board confirms that it has jurisdiction to decide the City's petition for declaratory order.

Pursuant to § 209(e)(2) of the Rail Act, 45 U.S.C. § 719(e)(2), the Special Court has jurisdiction over cases that raise “substantial questions with respect to the interpretation of the [Final System Plan] and [the Special Court's] conveyance orders themselves.” Conrail, 571 F.3d at 19 (citing Consol. Rail Corp. v. Pittsburgh & Lake Erie R.R., 459 F. Supp. 1013, 1017 (Spec. Ct. 1978)). This jurisdiction extends to disputes over the interpretation of conveyance documents such as the Deed. Trustees of Penn Cent. Transp. Co. v. USRA, 463 F. Supp. 1321, 1323 (Reg'l Rail Reorg. Ct. 1979).

No questions implicating the Special Court's jurisdiction are at issue in this proceeding. The City does not “contest the meaning of the deed” and “accepts Reading's characterization of its interest” (City Mot. to Strike 12),¹³ and as discussed in more detail below, Reading does not claim to be a carrier or to have a common carrier obligation over the Ninth Street Branch. The only dispute centers on whether Reading's retained ownership interest remains under the Board's jurisdiction, a question which can be addressed without having to interpret the FSP, the Special Court's conveyance orders, or the Deed. See Conrail, 571 F.3d at 20 (“Only in proceedings in which the Board's authority is challenged and an interpretation of the FSP or the Special Court's conveyance order under 45 U.S.C. § 719(e)(2) is required does the Board lack jurisdiction to resolve the question of the nature of the trackage sought to be abandoned”); Allegheny Valley R.R.—Pet. for Declaratory Ord., FD 35239, slip op. at 6 (STB served April 19, 2013) (finding that a matter before the Board did not need to be referred to the Special Court because it did not involve interpretation of the FSP or conveyance orders).

DISCUSSION AND CONCLUSIONS

The Board has authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proc., 5 I.C.C.2d 675 (1989). In the Scioli Turco decision, the District Court ruled that the Ninth Street Branch was not abandoned as a result of Conrail's abandonment proceeding before the ICC in 1983. (Pet., Ex. D at 9-10.) As a threshold matter, Reading argues that the legal doctrines of res judicata and collateral estoppel may bar the City from litigating the Board's jurisdiction over the Ninth Street Branch. (Reading Reply 12-13.) The Board disagrees that the doctrines of res judicata and collateral estoppel prohibit the Board from ruling on the current petition for declaratory order.

¹³ Despite the parties' agreement that Reading owns the underlying property, the Board renders no conclusion as to which party holds fee title. To the extent there is any dispute arising from the FSP or the Deed as to which party holds fee title, that would likely be a matter for the Special Court to resolve. Regardless of which party holds fee title, the Board's decision here would remain unchanged.

As Reading concedes, (*id.* at 12-13), *res judicata* only may apply to bar re-litigation “with the same party or his privy,” Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979), while collateral estoppel similarly applies only where the litigant had a “full and fair opportunity for judicial resolution of the same issue,” *id.* See also United States v. 5 Unlabeled Boxes, 572 F.3d 169, 173 (3d Cir. 2009) (explaining that *res judicata* requires the “same parties or their privies” while collateral estoppel requires that the party being precluded was “fully represented in the prior action”); Novak v. World Bank, 703 F.2d 1305, 1308-09 (D.C. Cir. 1983) (same). The City was not a party in the Scioli Turco case, and none of the recognized exceptions to the rule against nonparty preclusion are present in the record. See Taylor v. Sturgell, 553 U.S. 880, 893-95 (2008) (listing six exceptions to the rule against applying *res judicata* and collateral estoppel to non-parties). Although the City’s interest is aligned with the Scioli Turco plaintiffs on the issue of the Board’s jurisdiction, the record does not reflect that the City understood the Scioli Turco plaintiffs to be acting on its behalf in a representative capacity, nor does it appear that any special procedural protections were in place to ensure the City’s due process rights. See Nationwide Mut. Fire. Ins. Co. v. George V. Hamilton, Inc., 571 F.3d 299, 313 (3d Cir. 2009) (citing Taylor, 553 U.S. at 900). Moreover, Reading presents no argument in its reply as to why the District Court’s decision in Scioli Turco should be binding on the City.

Further, the Scioli Turco decision repeatedly acknowledges the Board’s exclusive jurisdiction over the abandonment of rail lines, (Pet., Ex. D at 4-5, 7-8, 12), and determines that the Board must authorize abandonment of the Ninth Street Branch before state property law claims may be brought against Reading, (Pet., Ex. D at 11-13). Although the District Court suggests the City file an application for adverse abandonment, (*id.* at 8, 11), the Board’s previous issuances (discussed more below) removed its jurisdiction over the Ninth Street Branch and thus rendered such procedural avenues unnecessary.¹⁴

“Rail Lines” and the Transfer of the Ninth Street Branch to Conrail.

A party seeking to acquire and/or operate a railroad line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. § 10901 or § 10902. However, the Board has long recognized a distinction between the legal concept of a “railroad line” and the underlying real property/physical assets. Cent. Puget Sound Reg. Transit Auth.—Acquis. Exemption—Certain Assets of City of Tacoma in Pierce Cnty., Wash., FD 35812, slip op. at 2-3 (STB served Feb. 5, 2015). As the Board has explained, a “railroad line” encompasses the regulatory right and obligation to operate as a common carrier and the property right needed to provide freight rail service. *Id.* at 3 (citing Mass. Dep’t of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc. (Mass DOT), FD 35312, slip op. at 6 (STB served May 3, 2010) *aff’d sub nom. Bhd. of R.R. Signalmen v. STB*, 638 F.3d 807 (D.C. Cir. 2011) (explaining that “railroad line” has been defined to include “the interstate freight transportation authority *attached* to the physical property”) (emphasis added)). That is, a “rail

¹⁴ The Board encourages courts to refer to the Board questions involving rail line abandonments, as such referrals help “ensure desirable uniformity of results” and promote consistency in decisions affecting the national rail network. See V & S Ry., LLC v. Hutchinson Salt Co., No. 08-1402 WEB (D. Kan. Dec. 20, 2010) (quoting S. Utah Wilderness Alliance v. Bureau of Land Mgmt., 425 F.3d 735, 750-51 (10th Cir. 2006)).

line,” for Board purposes, is not coterminous with the underlying real property and physical rail assets, but instead refers collectively to the common carrier obligation and the property rights used to effectuate that obligation. See Norfolk S. Ry.—Aban. Exemption—in the City of Greensboro, N.C., AB 290 (Sub-No. 404X), slip op at 4 (STB served June 28, 2023) (“Rail lines and rights-of-way for rail lines are not synonymous”). Those property rights may be in the form of fee title ownership or lesser rights such as an easement.

Accordingly, under the Board’s longstanding State of Maine precedent, a party may acquire physical rail assets (such as tracks, ties, viaducts, and bridges) and the land underlying those assets, but is not considered to have acquired a “rail line” for regulatory purposes provided the selling rail carrier “retain[s] the common carrier obligation to provide service, as well as the means to do so—namely, a permanent, exclusive freight rail easement and sufficient control over its operation to carry out the common carrier obligation without undue interference.” Cent. Puget Sound, FD 35812, slip op. at 3 (citing Me. Dep’t of Transp.—Acquis. & Operating Exemption—Me. Cent. R.R. (State of Maine), 8 I.C.C.2d 835 (1991)); see also Mass. Coastal R.R.—Acquis.—CSX Transp., Inc., FD 35314, slip op. at 3-6 (STB served Mar. 29, 2010) (emphasizing that the rail freight easement is the property interest that triggers the Board’s jurisdiction and establishes the “rail line”). Likewise, and as described further below, following the transfer of the Ninth Street Branch to Conrail, the “rail line” for agency purposes consisted of Conrail’s easement to provide freight rail service and Conrail’s corresponding common carrier obligation. See Cent. Puget Sound, FD 35812, slip op. at 2-3.

Reading’s predecessor, Reading Railroad, was one of several northeastern railroads that were reorganized in bankruptcy proceedings conducted under the 3-R Act. As noted above, supra n.4, the USRA developed the FSP to determine which lines owned by Reading Railroad and other bankrupt railroads were to be retained in active service, typically through transfer to Conrail, and which lines could be abandoned.¹⁵ See Rail Serv. Continuation Subsidy Standards, EP 566, slip op. at 2 (STB served May 22, 1998); Ulster & Del. Ry. Revitalization Corp.—Pet. for Declaratory Ord., FD 36164, slip op. at 2 n.3 (STB served June 29, 2018). The purpose of the 3-R Act was to establish a rail carrier that could provide common carrier rail service to the public in place of the failing railroads, which required “separat[ing] them from their rail assets and transfer[ring] those assets to Conrail.” Schweitzer v. Consol. Rail Corp., 65 B.R. 794, 801 (1986). According to the terms of the 3-R Act, once the bankrupt railroad had transferred all or substantially all of its rail properties to Conrail pursuant to the FSP, the bankrupt railroad was relieved of its common carrier obligation to provide rail service. 45 U.S.C. § 791(b)(4) (ending ICC involvement in 3-R Act reorganization proceedings after substantially all rail properties were transferred pursuant to the FSP). After the FSP became effective, the rail lines and freight easements that were transferred to Conrail became part of Conrail’s system, whereupon Conrail took over their operation. See 45 U.S.C. § 716 (detailing final system plan transfers); 45 U.S.C. 742(b) (directing Conrail to operate rail service over transferred rail properties).

¹⁵ The FSP was submitted to Congress on July 26, 1975, and was approved in § 601(e) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976).

Against this backdrop, it is clear that the Reading Railroad ceased being a federally-regulated rail carrier once its regulatory obligation to provide rail service was transferred to Conrail pursuant to the FSP in 1976. Reading and the City agree that under the 1976 transfer, Reading Railroad retained fee title to the property underlying the Ninth Street Branch, but the easement needed to provide freight rail service—along with the common carrier obligation—was conveyed to Conrail. (Reading Reply to Pet. 1; City Mot. to Dismiss 5, 12.) At that point, the ICC’s jurisdiction over Reading Railroad came to an end. Schweitzer, 65 B.R. at 796 (“After years of supervision, litigation, legislation, and negotiation under Section 77 of the Bankruptcy Act and the Rail Reorganization Act, the Reading Company emerged from reorganization proceedings. It no longer operated a railroad as its rail holdings were transferred to the Consolidated Rail Corp. (Conrail) in 1976, through acts of Congress”).

Reading, the successor to Reading Railroad, never asserts that it retained a common carrier obligation over the Ninth Street Branch,¹⁶ nor does Reading identify a “rail interest” other than owning “former rail property.” (Reading Reply to Pet. 2; see also id. at 18 (“Reading’s interests are interests that are tied to a former railway.”).) Reading also does not dispute the City’s assertion that Reading is not a rail carrier, and the only “interests” that Reading names in its pleadings are fee ownership of real estate. (Reading Reply to Pet. 6.) Accordingly, Reading’s own description of its retained “interests” supports a conclusion that its common carrier obligation over the Ninth Street Branch ended with the FSP transfer, consistent with the statutory scheme described above. At that point Reading Railroad became a non-carrier real property owner while the “rail line” for agency purposes consisted of Conrail’s easement and the attached common carrier obligation.¹⁷ And, as explained in the following section, when Conrail sought, received, and consummated abandonment authority from the ICC, the “rail line” was abandoned, and the ICC’s (and now the Board’s) jurisdiction over the Ninth Street Branch ended.

¹⁶ Although Reading asserts that “rail interests and common carrier obligations can remain” after other interests in a rail line are abandoned (Reading Reply to City Mot. to Strike 3 n.4), Reading does not assert that it has any such obligation with respect to the Ninth Street Branch or identify a rail carrier that might hold one.

¹⁷ Reading argues that Pinelawn Cemetery—Petition for Declaratory Order, FD 35468 (STB served Apr. 21, 2015) supports its assertion that the Board has jurisdiction over the Viaduct Property even if Reading is not itself a rail carrier. (Reading Reply to Pet. 16-18.) Specifically, it claims that the Board held in that decision that a rail line remains under the agency’s jurisdiction even if it is used for non-rail purposes (such as the Viaduct Property today). (Id. at 17-18.) The primary issue in Pinelawn was whether a rail carrier had abandoned ancillary track—which, under 49 U.S.C. § 10906, does not require prior approval from the Board—notwithstanding (among other things) the track’s concurrent non-rail use by a non-carrier. By contrast, in this case neither Reading nor anyone else is contesting the fact that the rail carrier (Conrail) abandoned the Ninth Street Branch. The distinct issue presented here is whether Conrail’s abandonment removed the Board’s jurisdiction over the underlying rail property. It did, as explained below, and Pinelawn has no bearing on that question.

Conrail's Abandonment Under the Northeast Rail Service Act of 1981.

The abandonment of a rail line terminates the common carrier obligation and removes the Board's jurisdiction over the line. See Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 633-34 (1984) (consummation of abandonment terminates the agency's jurisdiction); Baros v. Tex. Mex. Ry., 400 F.3d 228, 234 (5th Cir. 2005) ("Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board's] jurisdiction terminates"). Once a rail line is abandoned, for purposes of the Board's regulatory jurisdiction, the underlying right-of-way becomes "ordinary real property," and its disposition becomes subject to the application of state property law. Hayfield, 467 U.S. at 632-33 (explaining that abandonment brings the agency's "regulatory mission to an end").¹⁸ As discussed below, that is precisely what happened in this case.

In the early 1980s, Conrail was struggling financially. In response, Congress amended the 3-R Act in an effort to help Conrail become a profitable entity through passage of the Northeast Rail Service Act of 1981, Pub. L. No. 97-35 (NERSA). See Minsi Rail Corp. v. United States, 638 F. Supp. 1346, 1350 (Spec.Ct. R.R.R.A. 1986). Under NERSA, Congress streamlined the process by which Conrail could abandon redundant and unprofitable lines it had received via the FSP by not having to go through the ICC's traditional abandonment process. Minsi Rail Corp., 638 F. Supp. at 1350. Specifically, NERSA amended the 3-R Act by expressly exempting abandonments of lines in Conrail's system from the requirements of 49 U.S.C. § 10903 and instead establishing separate, expedited procedures for such abandonments. See 45 U.S.C. § 748(a). Under the expedited process, for any abandonment application filed before the ICC between December 1, 1981, and November 1, 1983, Conrail only needed to include a "Notice of Insufficient Revenue" (NIR).¹⁹ So long as Conrail submitted a timely NIR, the ICC was required "to grant without examination, any Conrail abandonment unless an offer of financial assistance [was] timely filed." Conrail Abans. Under NERSA, 365 I.C.C. 472, 475 (1981); 45 U.S.C. § 748 (NERSA abandonment applications filed by Conrail "shall be granted" barring a timely offer of financial assistance).

Pursuant to the streamlined abandonment process that Congress established in NERSA, Conrail filed an application with the ICC to abandon the Ninth Street Branch in 1983. Conrail

¹⁸ In some cases, the Board has authorized rail operations over an already-abandoned right-of-way, which brings *just the operations* within the Board's jurisdiction. See, e.g., Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No 1X), slip op. at 3 (STB served Apr. 6, 2020) (explaining that "authorizing operations by a non-owning carrier over an abandoned line places only the transportation service under the Board's jurisdiction" and not the "underlying right-of-way") (citing Wis. Cent. Ltd. v. STB, 112 F.3d 881, 890 (7th Cir. 1997)). Such circumstances are not present here where no entity sought authority to operate the Ninth Street Branch following its abandonment by Conrail in 1984. Since that time, the agency has had no jurisdiction or regulatory involvement over the Ninth Street Branch.

¹⁹ The authority to file NIRs was subsequently extended from November 1, 1983, to November 1, 1985. Supplemental Appropriations Act, 1984, Pub. L. No. 98-181, § 2003(c)(2), 97 Stat. 1153, (effective November 30, 1983).

Aban., AB 167 (Sub-No. 479), slip op. at 1 (ICC served June 24, 1983). The record in the 1983 proceeding reflects that Conrail filed an NIR for the Ninth Street Branch on December 11, 1982 (Conrail Notice 1, Dec. 11, 1982, Conrail Aban., AB 167 (Sub-No. 479)), and that no offer of financial assistance was filed. The record further reflects that the ICC served a certificate and decision authorizing the line for abandonment on June 24, 1983. Conrail Aban., slip op. at 1. In that decision, the ICC certified that Conrail was “authorized to abandon the line,” and directed Conrail to advise the ICC of the date that Conrail exercised the abandonment authority. (Id. at 2.) On May 1, 1984, Conrail notified the ICC that “Conrail has implemented the abandonment authority granted in [the ICC’s] order” as of April 23, 1984. Conrail Letter 1, Conrail Aban., AB 167 (Sub-No. 479).

It is clear that Conrail’s obligation to provide common carrier service over the line terminated in 1984 upon its consummation of the ICC’s grant of abandonment authority. Reading itself does not contest this fact. (Reading Reply to Pet. 6 (stating that “Conrail relinquished only operations related to freight”), 8 (stating that “Conrail only relinquished its easement for operations”).) Conrail’s application was clearly styled as an application for abandonment (Conrail Application for Aban. 1, March 16, 1983, Conrail Aban., AB 167 (Sub-No. 479)), and the ICC’s decision explicitly granted abandonment authority, Conrail Aban., slip op. at 1-2, which Conrail subsequently consummated.

Reading suggests that the language in the ICC’s decision was an indication that Conrail merely sought discontinuance authority, thereby preserving the rail line. (Reading Reply 7-11). The confusion appears to stem largely from a statement in Conrail’s abandonment application that “[t]he above described lines [including the Ninth Street Branch] are owned by Southeastern Pennsylvania Transportation Authority (SEPTA), and it is for this reason that the presently proposed abandonment relates only to Conrail’s operation of the lines.” (Conrail Appl. 1, Mar. 16, 1983, Conrail Aban., AB 167 (Sub-No. 479).) But such a statement is entirely consistent with a conclusion that Conrail’s freight easement coupled with its common carrier obligation, and not any property interest held by Reading, formed the basis for the Board’s jurisdiction over the Ninth Street Branch. Commuter rail service provided by SEPTA was not subject to the ICC’s regulatory jurisdiction, see 49 U.S.C. § 10501(c), previously 49 U.S.C. § 10504(b) (1995), originally codified at 45 U.S.C. § 744(j) (1976), and any ownership interest held by SEPTA at the time of Conrail’s abandonment of the Ninth Street Branch would not justify a finding that the Board has jurisdiction over the line.²⁰

Moreover, where a rail carrier’s property interest is an easement, the Board typically extinguishes the common carrier obligation, and removes its jurisdiction, “by granting an

²⁰ The Board recognizes that Conrail identified SEPTA as the “owner” of the line. However, neither of the parties to this proceeding assert that SEPTA owned a fee interest in the Viaduct Property. The District Court in Scioli Turco also stated that SEPTA never owned a fee interest but instead maintained an easement in a “traction power substation at Callowhill Street and overhead transmission wires along the line,” to which it relinquished its rights in 2010. (Pet., Ex. D at 10-11.) Conrail’s statement that SEPTA “owned” the line may have been a reference to SEPTA’s easement. Regardless, SEPTA’s property interest in the Ninth Street Branch is immaterial to the issue of whether the line segment was abandoned by Conrail.

abandonment.” Energy Solutions, LLC—Aban. Exemption—in Anderson & Roane Cntys., Tenn., AB 1128X, slip op. at 2 (STB served June 5, 2015); see also Mass Coastal R.R., FD 35314, slip op. at 3 (“The Board has consistently treated rail freight easements as rail carrier property that cannot be transferred or abandoned without Board authorization”).²¹ Additionally, the historical record shows that Conrail understood the difference between abandonment and discontinuance authority, and knew how to seek discontinuance authority if that was what it intended. In several NERSA abandonment proceedings, Conrail requested, and the ICC granted, discontinuance authority instead of or in addition to abandonment authority.²²

Nor do the facts presented in the record support a conclusion that the 1984 Conrail abandonment resulted in simply a discontinuance of service. As discussed above, the record indicates that Reading’s common carrier obligation over the Ninth Street Branch ended when the rail line was transferred to Conrail. Reading does not identify any other entity on the line with a common carrier obligation.²³ Moreover, while a discontinuance would have preserved the

²¹ ICC precedent includes multiple NERSA abandonments in which Conrail did not own a fee simple interest in the right-of-way for the line being “abandoned.” See, e.g., Conrail Aban. of a Portion of the W. 30th St. Secondary Track in New York, N.Y., AB 167 (Sub-No. 493N), slip op. at 1 (ICC served July 12, 1984) (“Conrail estimates that the line has a zero net liquidation value because it does not own the underlying right of way and the cost of dismantling the line would offset its salvage value.”); Conrail App. 2, Conrail Aban. in Erie Cnty., N.Y., AB 167 (Sub-No. 538N) (“Conrail does not hold title to the right of way underlying the Black Rock Hole Track and assigns no net liquidation value to the line.”). In other instances, Conrail stated that it did not own the line that was the subject to a NERSA abandonment proceeding. See, e.g., Conrail Aban. in Luzerne Cnty., Pa., AB 167 (Sub-No. 460N), slip op. at 2 (ICC served June 17, 1983) (“Conrail . . . claims that it does not own the line and did not assign an estimated value to the property”); Conrail Aban. Between Chick & Cook St. & Needham Junction & Medfield Junction Mass., AB 167 (Sub-No. 353N), slip op. at 2 (ICC served June 11, 1982) (“Conrail submitted no estimated net liquidation value nor could it since it does not own the line in question.”).

²² See Conrail Discontinuance in Seneca & Crawford Cntys., Ohio, Docket No. AB 167 (Sub-No. 934N) (discontinuance authority requested and granted); Conrail Discontinuance of Serv. in Norfolk Cnty., Mass., Docket No. AB 167 (Sub-No. 954N) (same); Conrail Discontinuance of Operation of the Silver Street Indus. Track in New Haven Cnty., Conn., Docket No. AB 167 (Sub-No. 973N) (same); Conrail Discontinuance of Operation of the Silver Street Indus. Track in New Haven Cnty., Conn., Docket No. AB 167 (Sub-No. 1019N) (same); Conrail Abandonment and Discontinuance of Operations Over the Bethlehem Branch in Northampton, Lehigh and Bucks Cntys., Pa., Docket No. AB 167 (Sub-No. 1047N) (both discontinuance and abandonment authority requested and granted).

²³ Reading suggests that the fact that SEPTA rail operations continued on the viaduct after Conrail abandoned its operations shows that the Viaduct Property is still under the Board’s jurisdiction. (Reading Reply to City Mot. Strike 2-3.) As noted above, SEPTA is not subject to this agency’s regulatory jurisdiction and has not been since 1976. See 49 U.S.C. § 10501(c), previously 49 U.S.C. § 10504(b) (1995), originally codified at 45 U.S.C. § 744(j) (1976). As

Board's jurisdiction over the Ninth Street Branch, it would also have preserved Conrail's easement over the property. Preseault v. ICC, 494 U.S. 1, 8 (1990) ("By deeming interim trail use to be like discontinuance rather than abandonment . . . Congress prevented property interests from reverting under state law."); see also Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996) ("State law claims can only be brought *after* the ICC has authorized an abandonment and after the railroad has consummated that abandonment authorization."). And yet Reading consistently refers to Conrail's rights in the property as having been "abandoned" (Reading Reply to Pet. 3, 5-7, 10, 12, 14, 18) or "relinquished," (*id.* at 1, 2, 7, 11) and does not appear to believe that its property is still burdened by Conrail's easement.

It is likewise well established that a consummated Conrail abandonment under NERSA has the same effect as an abandonment under 49 U.S.C. § 10903: the abandoned lines are no longer under the agency's jurisdiction. Consol. Rail Corp.—Pet. for Declaratory Ord., 1 I.C.C.2d 284, 284 (1984); Wallkill Valley R.R.—Operation Exemption—Between Kingston & New Paltz, N.Y., FD 31909, slip op. at 3 (ICC served Dec. 28, 1992). Again, the fact that Conrail operated the line via an easement does not affect this conclusion. The NERSA abandonment process could be used to abandon any Conrail interest that was subject to the abandonment requirements of 49 U.S.C. § 10903, whether that interest was ownership of the line itself or the holding of an easement. Conrail Aban. of the Weehawken Branch—In Hudson Cnty., N.J., AB 167 (Sub-No. 766N) et al., slip op. at 7 (STB served Mar. 13, 2001).

CONCLUSION

The Board finds that the Ninth Street Branch,²⁴ has been abandoned. The Board further finds that the rail line, and consequently the Viaduct Property, are no longer under Board jurisdiction. Reading Railroad's common carrier obligation was conveyed to Conrail pursuant to the FSP in 1976. At that point, Reading Railroad became a non-rail carrier property owner. Additionally, Conrail's common carrier obligation over the rail line came to end upon consummation of its 1983 ICC-issued abandonment authority. Because there was no remaining entity with a common carrier obligation with respect to the Ninth Street Branch once Conrail abandoned its easement, the agency's jurisdiction over the line terminated and does not preempt state law affecting the underlying property.

For these reasons, the City's petition for declaratory order is granted.

It is ordered:

1. The City's motion for leave to file a reply to Reading's reply to the City's petition for declaratory order is denied.

such, whatever operations it might have conducted post-Conrail abandonment do not support a conclusion that the Board has jurisdiction over the line.

²⁴ Specifically, "Ninth Street Branch" refers to the rail line from milepost 1.6, a point south of Jefferson Street, to milepost 0.0 at Reading Terminal, a distance of approximately 1.6 miles. Supra n.2.

2. Reading's motion to strike the City's reply to Reading's reply to the City's petition for declaratory order is rejected as moot.

3. The City's reply to Reading's reply to the City's petition for declaratory order is stricken from the record.

4. Reading's motion to strike the City's reply to Reading's reply to the City's petition for declaratory order is stricken from the record.

5. The City's motion to strike Strohmeyer's motion to dismiss is granted.

6. Strohmeyer's motion to dismiss the City's petition for declaratory order is stricken from the record.

7. The City's petition for declaratory order is granted as discussed above.

8. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz. Board Member Schultz concurred with a separate expression.

BOARD MEMBER SCHULTZ, concurring:

I am writing separately to address Mr. Strohmeyer's comments in which he raises questions of whether my prior position at the Southeastern Pennsylvania Transportation Authority (SEPTA) creates a conflict of interest in this proceeding. (See Strohmeyer Mot. to Dismiss 17-23.) While the Board's Decision strikes Mr. Strohmeyer's motion from the record, in the interest of transparency and to assure parties that I have approached this matter with the impartiality that is required by law and that litigants before the Board deserve, I nevertheless will explain why his comments regarding a potential conflict of interest have no merit.

Whether my participation in this proceeding raises a question regarding my impartiality is governed by 5 C.F.R. part 2635, subpart E—Impartiality in Performing Official Duties. Under 5 C.F.R. § 2635.502, "Personal and business relationships," there are three categories of situations that could require an impartiality determination: (1) when a matter involving specific parties is likely to have a "direct and predictable effect on the financial interest of a member of the employee's household"; (2) "[w]hen an employee knows that a person with whom the employee has a covered relationship is or represents a party to a particular matter involving specific parties"; and (3) "circumstances other than those specifically described [above] . . . [that] would raise a question regarding [the employee's] impartiality." 5 C.F.R. § 2635.502(a)(1)-(3). Mr. Strohmeyer's concerns regarding my previous employment with SEPTA seem to relate to the second and third categories, so I will address each of those two categories in turn.

The second category under 5 C.F.R. § 2635.502(a) requires a "covered relationship" with a party or someone representing a party. First, SEPTA is not a party to this proceeding. However,

even if SEPTA were a party, a relationship with a former employer is a covered relationship only if it is with a “person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.” 5 C.F.R. § 2635.502(b)(1)(iv). I ended my employment with SEPTA in January 2021, which means that the one-year period in which I was in a covered relationship with SEPTA ended in January 2022. Accordingly, because SEPTA is not a party and my relationship with SEPTA is not a covered relationship under the regulation, my previous employment does not implicate the second category under 5 C.F.R. § 2635.502(a).

The third category under 5 C.F.R. § 2635.502(a) is something of a catch-all in instances where a concern about impartiality does not fall into either of the first two categories. As the agency designee for the purposes of this impartiality determination, I “may make an independent determination as to whether,” based on my previous employment with SEPTA, “a reasonable person with knowledge of the relevant facts would be likely to question [my] impartiality in [this] matter.” 5 C.F.R. § 2635.502(c)(1).

Again, SEPTA is not a party to this proceeding, and I resigned my position with SEPTA over four years ago. Further, SEPTA relinquished its easement rights in the Ninth Street Branch in 2010. *Scioli Turco, Inc. v. Phila. & Reading R.R.*, No. 21-563, 2023 WL 7646535, at *5 (E.D. Pa. Nov. 14, 2023). The Board’s decision in this matter—and my participation—do not affect whatever interests SEPTA relinquished fifteen years ago.

Based on the facts above, and in consultation with the Board’s Designated Agency Ethics Official, I have determined that a person with knowledge of the relevant facts would not be likely to question my impartiality based on my previous employment with SEPTA, and that my participation in this matter is proper. See 5 C.F.R. § 2635.502(a).