53196 SERVICE DATE – NOVEMBER 5, 2026
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36833 (Sub-No. 1)

LAMPWRIGHTS LLC—PETITION FOR DECLARATORY ORDER

Digest:[1] This decision denies Lampwrights LLC's petition for declaratory order.

Decided: November 4, 2026

On May 8, 2026, Lampwrights LLC (Lampwrights) filed a petition seeking a declaratory order that a right-of-way on which Lampwrights has proposed to construct and operate a line of railroad (the Proposed Line) in Docket No. FD 36833 (the Construction Docket) is already within the Board's jurisdiction.[2] The Proposed Line would be constructed on a segment of former Erie Lackawanna Railway Company (EL) right-of-way previously known as the Toby Branch, from milepost 2.68 to milepost 7.7.[3] In its petition for declaratory order, Lampwrights asks the Board to: (1) find that the right-of-way where Lampwrights is proposing to construct and operate the Proposed Line was never abandoned and remains under the Board's jurisdiction; (2) find that 49 U.S.C. § 10501 preempts a 1990 decision by the Pennsylvania Court of Common Pleas for the 59th Judicial District Court finding that a segment of the right-of-way was abandoned; (3) find that Lampwrights does not require construction authority over the entirety of the right-of-way as has been requested in the Construction Docket, but rather, needs only to amend its petition in that docket to seek authority to acquire and operate a portion of the right-of-way; and (4) grant after-the-fact authority for its acquisition of this right-of-way or direct Lampwrights to file an appropriate notice or petition to perfect such authority.[4] (Pet. at 6-7.) For the reasons explained below, the Board will deny the petition.

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[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] On May 8, 2026, Lampwrights also filed a motion asking the Board for partial expedited consideration of its petition for declaratory order with regard to issues related to the Brockway Area Sewage Authority (BASA). That motion is dismissed as moot, as the requests related to BASA were subsequently withdrawn.

[3] When discussing the status and ownership of this segment in the past, this decision refers to the "Toby Branch." When discussing this segment as it exists in the present or as it may exist in the future, this decision refers to the "Proposed Line."

[4] Lampwrights' petition also requests that the Board find that BASA lacked authority to condemn part of the right-of-way for the purpose of a sewer line and that BASA's continued occupation of its easement for the sewer line is preempted. (Pet. at 6.) However, Lampwrights

BACKGROUND

In response to the bankruptcies of Penn Central Transportation Company (Penn Central) and several other northeastern railroads, Congress enacted the Regional Rail Reorganization Act of 1973 (3R Act), Pub. L. No. 93-236, 87 Stat. 985 (1974) (codified at 45 U.S.C. §§ 701-719). The 3R Act created the Consolidated Rail Corporation (Conrail) and established the United States Railway Association (USRA) to examine the bankrupt railroads' properties and identify which of their lines would be retained in active service and conveyed to Conrail or another railroad not in reorganization. USRA's plan, known as the Final System Plan (FSP), was submitted to Congress in July 1975, and implemented in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Pub. L. No. 94-210, 90 Stat. 31 (1976).

The rail lines included in the FSP were divided into segments and assigned numbers. The Proposed Line would include:

- a portion of the segment designated as Line No. 6553,[5] extending from milepost 2.68 to milepost 2.7 at Crenshaw, (Pet., Ex. A),
- all of the segment designated as Line No. 1269, extending from milepost 2.7 at Crenshaw to milepost 6.2 at Hydes, FSP Vol. II at 504,[6] and
- a portion of the segment designated as Line No. 262, extending from milepost 6.2 at Hydes to milepost 7.7 at the Greentree Landfill,[7] (Pet. 6, Ex. A), FSP Vol. II at 504.

Under the 3R Act, line segments covered by the FSP that were not designated for transfer to Conrail or other carriers could be abandoned without authority from the Board's predecessor,

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subsequently filed a motion to withdraw these requests because it reached an agreement with BASA to relocate the sewer line. (Lampwrights Mot. 1-2, Sept. 21, 2026.)

[5] The FSP indicated that Line No. 6553 extended between milepost 0.0 at Brockway, Pa., and milepost 2.7 at Crenshaw, Pa., and was designated for sale to the Chessie System. FSP Vol. I at 309. Lampwrights explains that Chessie System did not in fact acquire this segment; rather, it was sold to Pittsburg & Shawmut Railroad Company (PSRC) in 1977 and is currently operated by Buffalo & Pittsburgh Railroad, Inc. (BPRR) (though, as discussed below, there is dispute as to whether PSRC acquired the segment from milepost 2.68 to milepost 2.7 as part of this sale). (Pet. 11; id., Ex. L.) Line No. 6553 was part of a larger 69.5-mile line, Line No. 1252, which ran from Howard, Pa., to Crenshaw. See id.; FSP Vol. II at 477.

[6] The FSP listed Line No. 1269 as out of service since December 1970 and did not designate it for transfer to Conrail. FSP Vol. II at 504.

[7] Lampwrights claims that the rail line from Hydes (milepost 6.2) to the terminus of what was the former EL line (milepost 10.57) was not subject to the FSP, including the segment of its Proposed Line from milepost 6.2 to milepost 7.7. (Pet. 6, 18-20.) However, as discussed more below, the FSP identifies the segment from "Hydes to [t]erminus" as Line No. 262 and describes it as "abandoned." FSP Vol. II at 523-24.

the Interstate Commerce Commission (ICC).[8] See 3R Act § 304, 87 Stat. at 1008. To abandon these lines, carriers first had to provide notice that service was being discontinued. Id. That notice had to be provided to the governor, state transportation agencies, the government of each political subdivision in the state in which lines were located, and each shipper who had used the line in the previous 12 months.[9] Id. Once 120 days had passed after the effective date of a notice of discontinuance, carriers could abandon the lines by providing a notice of abandonment to those same parties.[10] Id.

In 1973, the portion of the Toby Branch extending from Hydes to Crenshaw, i.e. Line No. 1269, was the subject of an abandonment application in Docket No. AB 48 (Sub-No. 6).[11] (Pet., Ex. F.) The application was dismissed for lack of jurisdiction on June 26, 1975.[12] (Id., Ex. G.) On December 10, 17, and 24, 1975, a notice of discontinuance of rail service for the portion of Line No. 1252 designated as Line No. 6553, and for Line No. 1269 was published in the New Castle News. (Id., Ex. K.) The notice stated that it was providing notice of EL's intent to discontinue service on February 27, 1976 "in accordance with Section 304(a) of the [3R Act]." (Id.)

In 1978, by quitclaim deed, EL conveyed to George Brosky the segment of right-of-way from milepost 2.68 to milepost 3.9, comprising the eastern 0.02 miles (approximately 106 feet) of Line No. 6553/Line No. 1252 and the western 1.2 miles of Line No. 1269. (Id., Ex. M.) In

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[8] After the 3R Act was passed but before the FSP was approved by Congress, abandonment was governed by § 304(f) of the 3R Act. See 3R Act §§ 102(6), 304(a)(1), (f), 87 Stat. at 987, 1008-09. Section 304(f), entitled "interim abandonments," allowed railroads to abandon a line if the abandonment was approved by the USRA and no affected State or local or regional transportation authority reasonably opposed the abandonment.

[9] Congress amended this notice requirement in 1976 to include an additional notice to the ICC. 4R Act § 804, 90 Stat. at 133.

[10] Discontinuance and abandonment pursuant to section 304 of the 3R Act were only available for two years from the effective date of the FSP or two years after the date on which the final rail service continuation payment was received, whichever was later. 3R Act § 304(c), 87 Stat. at 1008.

[11] An excerpt of this application is provided as exhibit F of Lampwrights' petition. The abandonment application states that abandonment authority was requested for the segment between milepost 2.75 at Crenshaw and milepost 6.24 at Hydes. (Pet., Ex. F.) However, the FSP and the map provided as exhibit A of Lampwrights' petition indicate that the segment between Crenshaw and Hydes extends between milepost 2.7 and milepost 6.2. FSP Vol. II at 504.

[12] The ICC found it lacked jurisdiction because during the period between the enactment of the 3R Act and the approval of the FSP by Congress, Section 304(f) of the 3R Act granted the USRA exclusive jurisdiction over abandonment of the lines of railroads in reorganization that were subject to the 3R Act. See Trs. of the Prop. of Erie Lackawanna Ry.—Aban. Portion of the Toby Branch Between Crenshaw & Hydes in Elk & Jefferson Cntys., Pa., slip op. at 2-3 (Comm'r O'Neil concurring) (ICC served Mar. 16, 1976).

1990, the Pennsylvania Court of Common Pleas for the 59th Judicial District Court ejected Mr. Brosky from this property.[13] The court found that EL had held an easement over the land but the easement was extinguished[14] under state law once EL conveyed it to Mr. Brosky. (Id., Ex. B at 2, 3-4, 10.) Lampwrights claims that it has acquired from the estate of Mr. Brosky "whatever interest the estate retain[ed] in the Toby Branch." (Id. at 4.)

In 1980, the Spencer Land Company (SLC) purported to acquire from EL the segment from milepost 3.9 to the terminus at milepost 10.57. (Pet. 12-13; id., Ex. P.) Subsequently, in 2025, Lampwrights acquired that segment from SLC. (Id. at 13.)

Petition for Declaratory Order. In its petition for declaratory order, Lampwrights argues that the Board should find that the segments of the Proposed Line that were designated as Line Nos. 1269 and 6553 by the FSP were never abandoned because there is no evidence that either segment was abandoned pursuant to the procedures of the 3R Act or pursuant to authority granted by the ICC or the Board. (Pet. 6.) Lampwrights states that it engaged in extensive research to attempt to locate any information indicating that the notices required to effectuate abandonment under the 3R Act were sent to the required parties by EL. (Pet. 14-15.) According to Lampwrights, it searched the National Archives, the Pennsylvania archives, and the EL archives and found no evidence that either Line No. 1269 or Line No. 6553 was abandoned pursuant to the 3R Act.[15] (Id.)

Lampwrights further argues that the publication of a notice of discontinuance in the newspaper in 1975 with respect to Line No. 1269 and the portion of Line No. 1252 constituting Line No. 6553, is not evidence of EL's intent to abandon those lines. (Id. at 11.) Rather, according to Lampwrights, the notice only indicates an intent to discontinue service. (Id.) It argues that "if abandonment were intended, the EL Trustees were required to provide notice of abandonment via a letter to the designated government authorities." (Id.) In support of this claim, Lampwrights claims that Line No. 6553 was not abandoned by EL but rather, as noted above, was sold to the PSRC and is currently operated by BPRR. (Id. at 11.)

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[13] A copy of this decision is provided as exhibit B of the petition.

[14] The court does not use the term easement but instead "right-of-way" and refers to the extinguishment of the easement as it being "abandoned." (Pet., Ex. B.) It is clear that the court was not using the term "abandonment" to refer to an abandonment at the federal level but under state property law.

[15] Lampwrights states that it found a letter from the EL trustees to the then-governor of Pennsylvania dated August 28, 1975, asking whether the state would be interested in subsidizing operations over various Pennsylvania rail lines including from Crenshaw to Hydes. (Pet. 15.) Lampwrights argues that the presence of this document indicates that if EL had provided an abandonment notice to the then-governor of Pennsylvania pursuant to the 3R Act, such a notice would have been present in the state archives it searched but that no notice was found. (Id.) Similarly, Lampwrights notes that it found various records in the EL archives related to portions of the segment and argues that the existence of these documents in the EL archives suggests that if EL had issued an abandonment notice, it would have been found with those documents. (Id.)

With respect to the remainder of the Toby Branch (i.e., from milepost 6.2 to milepost 10.57), which Lampwrights claims was not assigned a line number by the FSP, see supra note 7, Lampwrights argues that if it had been abandoned, there would have been an ICC abandonment proceeding. (Id. at 15.) Lampwrights states that it was unable to locate any ICC proceeding regarding abandonment of this segment. (Id. at 16.)

Lampwrights argues that if the Toby Branch was not abandoned, the 1990 order of the Pennsylvania Court of Common Pleas for the 59th Judicial District Court dispossessing Mr. Brosky of the segment from milepost 2.68 to milepost 3.9 is preempted. (Id. at 20-21.)

First Apostles' Doctrine Church (FADC) filed in opposition to Lampwrights' petition.[16] FADC argues that, with respect to Line No. 1269 (the segment from milepost 2.7 to milepost 6.2), Lampwrights' inability to locate documentation of an abandonment notice that would have been issued approximately 50 years ago should not be the sole basis for determining whether the Toby Branch was abandoned pursuant to the 3R Act. (FADC Reply 8-10.) Rather, FADC argues that the Board should apply the standard for determining whether a rail carrier consummated abandonment authority in cases where a line was authorized for abandonment under 49 U.S.C. § 10903 (and its predecessors) prior to 1997,[17] specifically, by considering whether EL showed a clear intention to remove the line from the national rail system, based on the totality of the circumstances. (Id. at 4.) FADC contends that, in this case, the totality of the circumstances indicates that the line was abandoned. (Id. at 10-13.) FADC states that Line No. 1269 was the subject of an abandonment application, which was ultimately dismissed by the ICC for lack of jurisdiction. (Id. at 10.) FADC claims that EL then initiated the process to abandon the Toby Branch pursuant to the 3R Act by seeking discontinuance authority, as evidenced by the discontinuance notice published in December 1975. (Id. at 11.) In addition, FADC argues that EL's subsequent conveyance of segments of Line No. 1269 to two noncarriers further supports the conclusion that EL intended to abandon the line. (Id.) Specifically, FADC notes that EL purported to sell a segment from milepost 2.68 to milepost 3.9 to Mr. Brosky and the remainder of Line No. 1269 to SLC. (Id.) FADC claims that documents relating to these conveyances indicated that the EL considered these segments to be "abandoned right-of-way." (Id.) Moreover, according to FADC, Lampwrights provides no evidence that the segment east of milepost 2.7 was ever operated as a rail line or maintained after the issuance of the FSP and there have been instances where it would have been in various persons' interests to assert that the Toby Branch remained within federal jurisdiction but that they failed to do so, including Mr. Brosky during the course of the 1990 ejectment action and those affected by BASA's taking of an easement for a sewer line in 2004. (Id. at 11-12.)

FADC further argues that Lampwrights overlooks evidence indicating that the segment from milepost 6.2 to milepost 10.57 was abandoned. (Id. at 6.) According to FADC, the ICC's

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[16] FADC states that the Proposed Line would traverse its property and interfere with its religious and charitable functions. FADC Reply 5, May 28, 2026, Lampwrights LLC—Constr. & Operation of a Line of R.R.—in Elk & Jefferson Cntys., Pa., FD 36833.

[17] Current Board regulations, adopted in 1997, require that railroads authorized to abandon lines must file a "notice of consummation" to signify that they have exercised the abandonment authority granted and fully abandoned the lines. 49 C.F.R. § 1152.29(e)(2).

original card catalog shows that in 1954, the Erie Railroad Company filed for abandonment and removal of "a portion of its Toby Branch extending northeasterly from Hydes, Pennsylvania, to the end of said branch, a distance of approximately 4.32 miles," and that this description corresponds to the section of the Proposed Line from milepost 6.2 and to milepost 10.57. (Id. at 7; id., Ex. B.) In addition, FADC claims that the FSP lists a segment from "Hydes to Terminus" in Pennsylvania with a suggested use as a recreation trail. (Id. at 7.) FADC states that a footnote to this table states that the segment was "[a]bandoned." (Id.)

According to FADC, Board precedent indicates that when faced with a lack of evidence regarding 3R Act abandonment notices, the Board may still find that a line was abandoned pursuant to the 3R Act based on the totality of the circumstances. (FADC Reply 8-10.) FADC argues that in this case, the totality of the circumstances clearly indicates that the segment from milepost 2.7 to 6.2 was abandoned.[18] (Id. at 8, 10.)

Horton Township (the Township) argues that the Board should decline to institute a declaratory order proceeding but that if it does, it should deny Lampwrights' motion for expedited consideration. The Township claims that all rail infrastructure was removed from the right-of-way long ago and has since been developed for other uses, both public and private, and that these established uses should not be disturbed.[19] (Township Reply 6-8.) In addition, the Township argues that the actions of various parties indicate that the Toby Branch was widely viewed as abandoned. (Id. at 11.) Specifically, the Township notes that EL sold portions of the Toby Branch to private landowners, a state court proceeding found that the rail easement used to operate over the line had been abandoned, the defendants in that state court proceeding denied that they had acquired the right-of-way for rail purposes, and the entirety of the community has relied on and acted in good faith in developing the property based on the understanding that the Toby Branch was abandoned. (Id.) The Township argues that Lampwrights should not be permitted to use this proceeding to relitigate the validity of existing deeds and easements and that doing so could lead other parties to try to overcome existing property interests or contracts. (Id. at 17-19.)

DISCUSSION & CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Ord. Procs., 5 I.C.C.2d 675, 675 (1989). In

[18] FADC takes no position on whether the segment from milepost 2.68 to 2.7 was abandoned. (FADC Reply 8 n.3.)

[19] A portion of the Proposed Line would be located in the Township. Twp. Reply 1, Dec. 9, 2025, Lampwrights LLC—Constr. & Operation of a Line of R.R.—in Elk & Jefferson Cntys., Pa., FD 36833. According to the Township, the Proposed Line raises concerns regarding "traffic congestion, noise, potential rail catastrophes, reduced property values, reduced population, environmental damage, and creation of an impediment to future development" as well as the effect on emergency services and nearby sewer lines. Id. at 2-3.

this case, the Board will issue a declaratory order to terminate the controversy and remove the uncertainty surrounding the status of the right-of-way at issue here. For the reasons discussed below, the Board finds that the subject segments of the right-of-way on which Lampwrights proposes to construct and operate the Proposed Line were previously abandoned and therefore are no longer within the Board's jurisdiction. Lampwrights' petition will therefore be denied.

Line No. 1269. As noted above, Line No. 1269 ran between milepost 2.7 at Crenshaw and milepost 6.2 at Hydes. Lampwrights argues that because it was unable to locate abandonment notices issued pursuant to the 3R Act for this segment, the Board must find that it was not abandoned.

As noted above, under the 3R Act, lines covered by the FSP but not designated for transfer to Conrail or another carrier could be abandoned if carriers: (1) provided notice that service was being discontinued, and (2) provided a notice of abandonment no sooner than 120 days after the discontinuance notice became effective.[20] 45 U.S.C. § 744(b). Thus, in considering whether a line had been abandoned under § 744(b), the Board must determine if a carrier properly provided both the notice of discontinuance and the subsequently required abandonment notice. But even in cases, as here, where required notices cannot be located, the Board is disinclined to find that a rail line remains within the agency's jurisdiction where it had been authorized for abandonment decades ago and has been consistently treated as such, including by the line's owner. See Walkersville S. R.R.—Discontinuance of Serv. Exemption—Frederick Cnty., Md., AB 1339X, slip op. at 8 (STB served July 21, 2025) (emphasizing the importance of "finality" regarding the jurisdictional status of a line). Accordingly, the Board's determination regarding the status of this segment does not turn entirely on there being no record of the § 744(b) notices. And in this case, the record evidence demonstrates that Line No. 1269 was abandoned.

It is undisputed that EL gave notice on December 10, 17, and 24, 1975, stating that it was giving notice pursuant to section 304(a) of the 3R Act of its intent to discontinue service over Line No. 1252 from milepost 0.0 to milepost 2.7 and the entirety of Line No. 1269 (milepost 2.7 to milepost 6.2). (Pet., Ex. K.).[21] As for the second requirement—providing an abandonment notice—the Board acknowledges that Lampwrights is unable to find a record that such notice was served on the required parties. But even so, EL (and others) consistently treated the segment as abandoned. Notably, in the years that immediately followed its discontinuance notice, EL purported to divide up and sell Line No. 1269 to two separate noncarrier entities for non-rail purposes. Specifically, EL attempted to convey the segment from milepost 2.68 to milepost 3.9 to an individual, Mr. Brosky, in 1978, and convey the remainder to noncarrier company, SLC, in

[20] As noted above, these notices initially had to be provided to the governor, state transportation agencies, the government of each political subdivision in the state in which lines were located, and each shipper who had used the line in the previous 12 months. The ICC was later added to the list of required parties.

[21] The notice stated that EL would discontinue service on February 27, 1976. (Pet., Ex. K.) The statutorily-required 120-day waiting period for EL to file its abandonment notice thus ended on June 26, 1976.

1980. (Pet., Ex. M; id., Ex. P.) As Lampwrights acknowledges, if these segments had remained within the agency's jurisdiction, the sales would have required acquisition authority from the ICC. (Pet. 23.) No such authority was sought. Moreover, EL specifically referred to the segment between Crenshaw and Hydes that was sold to SLC as "[a]bandoned right-of-way." (Id., Ex. Q.) EL's post-1976 actions and representations are entirely consistent with a desire to abandon Line No. 1269. The fact that EL also intended to abandon Line No. 1269 is further indicated by the fact that it previously applied to the ICC for abandonment authority over that segment under the predecessor to 49 U.S.C. § 10903 and (after the ICC dismissed the application for lack of jurisdiction) provided notice to discontinue service under the 3R Act (the necessary first step prior to abandonment). Finally, as FADC points out, other interested persons appear to have understood that Line No. 1269 was no longer within the agency's jurisdiction. For example, Mr. Brosky never argued that the property was still under ICC jurisdiction and that a court ruling that the rail easement had been extinguished under state law was therefore preempted, indicating that he too likely believed the line had been abandoned (at least at the federal level). (Pet., Ex. O.) In sum, after Line No. 1269 was authorized for abandonment, EL, the former carrier/owner, and others, treated the segment as no longer within the agency's jurisdiction. The Board will not now, 50 years later, find that this segment had not been abandoned and thereby disturb "the ability of carriers, shippers, and other interested parties to rely" on EL's actions, Walkersville, AB 1339X, slip op. at 8, solely because Lampwrights was unable to locate an abandonment notice for the segment.[22]

Line No. 1252/6553. The Proposed Line would include approximately 106 feet of the easternmost end of Line Nos. 1252 and 6553 (from milepost 2.68 to milepost 2.7). (Pet., Ex. A.) Again, as noted above, Line No. 6553 was a sub-designation of Line No. 1252 located at Line No. 1252's eastern end between milepost 0.0 and milepost 2.7. See supra note 5. Lampwrights claims that Line No. 6553 was not abandoned, but rather "was sold to [PSRC] and is currently operated by BPRR." (Pet. 11.) But the claim regarding BPRR's usage does not appear to be accurate. As shown in exhibit A of Lampwrights' petition, the eastern terminus of BPRR's line is located at milepost 2.68, thus not extending to milepost 2.7. In addition, although Lampwrights provided an internal EL document indicating that EL sold Line No. 6553 to PSRC in 1977, (Pet., Ex. L), Lampwrights also provides a deed showing that the EL sold the segment from milepost 2.68 to 3.9 to Mr. Brosky in 1978. (Pet., Ex. M.) And Lampwrights itself has argued that EL conveyed this segment of right-of-way to Mr. Brosky. (Pet. 6, 11-12, 24.) Thus, it appears that

[22] Lampwrights claims that in Ohio Rail Development Commission—Petition for Declaratory Ord. (ORDC), FD 36822 (STB served Mar. 30, 2026), the Board found that there was no basis to conclude that a line listed in the FSP had been abandoned because the notices required under the 3R Act could not be located and neither the ICC nor the Board ever granted abandonment authority. According to Lampwrights, the same facts are present in this case. However, ORDC is distinguishable from the present case. In ORDC, there was no indication that any party intended to abandon the line, took any steps to abandon the line, or treated the line as abandoned. Indeed, in ORDC, the evidence indicated that the state entity that purchased the line did so to prevent it from being removed from the rail network and maintained it to keep it available for future rail service. ORDC, FD 36822, slip op. at 6. In contrast, as discussed above, EL demonstrated its intent to abandon the line, took necessary steps to obtain abandonment authority, and subsequently treated the line as abandoned.

EL did not sell the small segment of Line No. 6553 from milepost 2.68 to milepost 2.7 to PSRC in 1977 but only the segment from milepost 0.0 to milepost 2.68 (which, according to Lampwrights, BPRR continues to use for rail service today). Instead, EL attempted to sell this short segment to Mr. Brosky, a noncarrier, in 1978. In other words, EL grouped the segment from milepost 2.68 to milepost 2.7 (Line No. 6553) with the adjacent segment to its east (Line No. 1269), which EL considered "[a]bandoned right-of-way," for sale to non-carriers. (Id., Ex. Q.) Accordingly, the Board concludes that EL abandoned the segment from milepost 2.68 to milepost 2.7, just as it abandoned Line No. 1269.

The Remainder of the Toby Branch. Lampwrights argues that the segment from milepost 6.2 at Hydes to the end of the line at milepost 10.57 (including the segment of its Proposed Line from milepost 6.2 to milepost 7.7) was not subject to the FSP. (Pet. 15.) Lampwrights claims that abandonment of this segment would have required abandonment authority via an ICC abandonment proceeding. (Id.) According to Lampwrights, there is no evidence of such a proceeding involving this segment and the Board should, therefore, conclude that it was never abandoned. (Id. at 16.) However, FADC's reply includes an excerpt from the ICC's card catalog obtained from the Board's records showing that in 1954 the Erie Railroad Company filed for abandonment and removal of "a portion of its Toby Branch extending northeasterly from Hydes, Pennsylvania, to the end of said branch." (FADC Reply, Ex. B.) Subsequently, the FSP referred to the segment from "Hydes to [t]erminus" as "abandoned" and recommended it be used as a trail.[23] FSP Vol. II at 523-24. Given the evidence of an ICC abandonment proceeding involving this segment and the fact that the FSP listed it as abandoned, the Board finds that the record supports the conclusion that this segment was abandoned.

For the reasons explained above, the Board will deny Lampwrights' request for an order finding that the Toby Branch was not abandoned.[24] The Board need not address Lampwrights' other requests for declaratory relief, which were all premised upon a finding that the Toby Branch segments had not been abandoned. Accordingly, Lampwrights' petition is therefore denied in full.

It is ordered:

1. Lampwrights' motion for expedited consideration is dismissed as moot.

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[23] The FSP assigned Line No. 262 to the line from "Hydes to [t]erminus." FSP Vol. II at 523. Lampwrights claims that the FSP's reference to Line No. 262 is a reference to a line of Penn Central and not the former EL line at issue here. (Pet. 19 n.52.) However, there is only one reference in the FSP to Line 262 and, while it indicates that it was located in Pennsylvania, it does not identify the railroad that owned it. Lampwrights does not explain how it concluded that this line was owned by Penn Central or offer any evidence indicating that there was a second line running from "Hydes to [t]erminus" parallel to EL's line. Accordingly, the Board finds no basis to conclude that Line No. 262 described in the FSP was a Penn Central line.

[24] Because the Toby Branch was abandoned, the underlying right-of-way is now "ordinary real property," and its disposition is subject to the application of state property law. Hayfield N. R.R. v. Chi. & N.W. Transp., 467 U.S. 622, 632 (1984).

2. Lampwrights' petition is denied.

3. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.