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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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March 28, 2018
Part of
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DOCKET NO. FD 36169

**CHESTER COUNTY, PENNSYLVANIA
PETITION FOR DECLARATORY ORDER –
NORFOLK SOUTHERN RAILWAY COMPANY**

**REPLY COMMENTS OF
NORFOLK SOUTHERN RAILWAY COMPANY**

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Dated: March 28, 2018

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Norfolk Southern Railway Company (“Norfolk Southern”) submits these reply comments to the Petition for Declaratory Order (“Petition”) filed by Chester County, Pennsylvania (“County”), on March 8, 2018, in the above captioned proceeding. Norfolk Southern respectfully requests that the Surface Transportation Board (“Board”) exercise its discretion and decline to open a proceeding or issue a declaratory order at this time.

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 721, 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 Intercity Transp. Co. v. United States*, 737 F.2d 103 (D.C. Cir. 1984); *Delegation of Auth.—Declaratory Order Proceedings*, 5 I.C.C. 2d 675 (1989).

In past instances in which the agency has issued declaratory orders related to the legal status or abandonment of a line, the determination was at issue in a pending legal proceeding or actual transaction. For example, in *Rails-to-Trails Conservancy, et al., Petition for Declaratory Order*, Finance Docket No. 31292, 1988 ICC LEXIS 196 (ICC served June 21, 1988), the interested parties requested a declaratory order proceeding to challenge a purported sale of a Burlington Northern Railroad Company line. More recently, in *Sunflower Rails-Trails*

Conservancy, Inc. – Petition for Declaratory Order – Sale of Railbanked Right-of-Way, Finance Docket No. 36034 (STB served Feb. 21, 2017), the petitioner was challenging a 2004 sale as violating the National Trails System Act. *See also Honey Creek Railroad, Inc. – Petition for Declaratory Order*, Finance Docket No. 34869 (STB served June 2, 2008) (addressing the abandonment status of a line after referral of the question by a state court, stating that “[b]ecause the court has asked for guidance, it is appropriate to issue a declaratory order and clarify the line's status”) (emphasis added).

No such need exists here. Norfolk Southern owns the line identified in the County's Petition. The property is not subject to a legal dispute, nor is the line subject to any contestable transaction. Norfolk Southern has not agreed to sell the line to the County or any other party, so the County's request for confirmation that “the acquisition of the Line by the County and its conversion to a rail trail can not be undertaken pursuant to the National Trails Act (“NTA”)” is, at best, seeking for the Board to answer an entirely hypothetical question. *See Household Goods Carriers' Bureau – Petition for Declaratory Order – Volume Rates for Relocation Companies*, Docket No. 38757 (ICC served Feb. 23, 1984) (“Our power pursuant to [5 U.S.C. § 554] is discretionary, and, in these circumstances, we decline to institute a formal declaratory order proceeding. No genuine controversy or uncertainty is shown to exist. The facts asserted by petitioner are general and the questions posed are hypothetical.”).

In short, the County has not demonstrated any interest that would justify the issuance of a declaratory order. As the Board is well aware, there are countless line segments owned by Norfolk Southern and other carriers that do not currently host active operations. Initiating a

Board fact-finding proceeding¹ to satisfy the idle curiosity of unrelated parties as to the status of these lines – or to facilitate outsiders’ attempts to manufacture pressure for carriers to sell railroad property – is not a worthwhile use of Board or stakeholder resources.

A decision to exercise the Board’s discretion and decline the Petition will not prejudice any parties. If an actual dispute or need for a determination of the status of this line does in fact arise in the future, the Board can take up the issue at that time, with more complete knowledge of the circumstances and consequences of any Board pronouncement.

Respectfully submitted,



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Dated: March 28, 2018

¹ To be clear, if the Board was to take up the question of the federal regulatory status of the line, the Board would need to open a proceeding and examine all evidence as to the status of the line and Conrail’s intent. *See Angeles A. Zorzi, Trustee of the Angeles A. Zorzi Living Trust, et al. – Petition for Declaratory Order*, Finance Docket No. 36016 (STB served Jan. 30, 2017) (“Prior to 1996, the agency depended on a case-by-case evaluation of all the facts and circumstances to see if the railroad showed a clear intention to remove the line from the national rail system and relinquish the property interest, or if instead the record indicated an intent to preserve the right-of-way for future reactivation of rail service.”). The County’s citation to the statement of a Pennsylvania PUC that the line had been approved for abandonment is of little help in that regard. *See* Petition at 3. As the Board knows, an agency grant of authority to abandon a line is permissive, so the mere observance of the issuance of a decision approving abandonment does not provide insight into the question of whether abandonment was actually consummated. Evidence of actual removal of any crossings, *see id.*, would be relevant to such an inquiry, but is far from dispositive on its own.

CERTIFICATE OF SERVICE

I certify that on March 28, 2018, the foregoing Reply Comments of Norfolk Southern Railway Company were served via first class U.S. mail upon the following:

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