

SERVICE DATE – MAY 13, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY—PETITION FOR DECLARATORY
ORDER

Decided: May 12, 2009

On April 23, 2009, the Allegheny Valley Railroad Company (AVRR or petitioner) filed a petition seeking a declaratory order concerning a 0.3-mile segment of a rail easement located between 16th Street and 21st Street in Pittsburgh, PA. The segment crosses a 3.21-acre parcel currently owned by The Buncher Company (Buncher), and it is part of a longer line known as the Valley Industrial Track. In 1983, Consolidated Rail Corporation (Conrail) sold the parcel to Buncher and reserved the rail easement for itself and its successors. In 1995, Conrail sold, among other assets, the 0.3-mile rail easement to AVRR.¹ By the time AVRR acquired the easement, most of the railroad track not embedded in concrete had been removed or covered. According to AVRR, neither Conrail nor it has ever sought abandonment authority for the easement from the Board or its predecessor, and therefore the easement remains subject to the exclusive regulatory jurisdiction of the Board.

AVRR wants to restore the 0.3-mile segment of the line and provide passenger and freight rail service over it. This goal is part of a wider plan envisioned by various public entities to institute commuter rail service over the Valley Industrial Track between Pittsburgh and New Kensington during and after the reconstruction of a major highway serving that area. Buncher opposes the plan to restore the 0.3-mile segment and claims that the easement has been extinguished. Buncher and a number of entities want to redevelop the land around the segment for commercial/residential and light industrial use. According to AVRR, Buncher fears that the restoration of service will preclude it from selling its land between 16th and 21st Streets as an undivided parcel.

AVRR has filed the instant petition to clarify whether the segment is an active rail easement. AVRR requests that the Board issue a declaratory order confirming (1) that the carrier has the full and unrestricted right to provide common carrier rail service over the permanent rail easement and (2) that it may proceed to reconstruct railroad tracks over the easement along with other rail facilities, including passenger platforms, without further opposition from adjacent landowners or governmental entities.

¹ See Allegheny Valley Railroad Company—Acquisition and Operation Exemption—Certain Lines of Consolidated Rail Corporation, Finance Docket No. 32783 (ICC served Nov. 17, 1995).

In a letter filed on May 4, 2009, Buncher states its strong disagreement with the position of AVRR. Buncher states that it will participate in this proceeding pursuant to the procedural schedule to be established by the Board for submitting evidence and argument in response to AVRR's petition.

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to terminate a controversy or remove uncertainty. In this case, there is a controversy on the present record regarding whether the 0.3-mile easement is a "line of railroad" under our jurisdiction, and the record is not complete on this question. Therefore, under the Board's authority at 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding will be instituted.

The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR 1112.1 et seq. The Board will treat the petition as AVRR's opening statement. Replies are due 20 days from the date of service of this decision. Petitioner's rebuttal will be due 10 days after the due date for the replies, or 30 days from the service date of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.

2. Replies are due by June 2, 2009.

3. Petitioner's rebuttal statement is due by June 11, 2009.

4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary