

September 10, 2019

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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
September 10, 2019
Part of
Public Record

Re: Holland Park Owner, LLC – Petition for Declaratory Order, Finance Docket No.
36308

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket is the Reply to Petitioner's Motion for Leave to File a Reply to a Reply and Reply to Petitioner's Sur-Reply.

If you have any questions, please contact me.

Respectfully submitted,



Carolyn Kraska

Associate
Carolyn.Kraska@hoganlovells.com
D +1 202 637 4649

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36308

**HOLLAND PARK OWNER, LLC - -
PETITION FOR DECLARATORY ORDER**

**REPLY TO PETITIONER'S MOTION FOR LEAVE TO FILE A REPLY TO A REPLY
AND REPLY TO PETITIONER'S SUR-REPLY**

Kevin M. Sheys
Edward J. Fishman
Hillary B. Neger
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street N.W.
Washington, DC 20004
(202) 637-5600

Jonathan M. Broder
Jocelyn G. Hill
Consolidated Rail Corporation
1717 Arch Street
Suite 1310
Philadelphia, PA 19103
(215) 209-5020

Attorneys for Consolidated Rail Corporation

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SURFACE TRANSPORTATION BOARD**

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INTRODUCTION

Holland Park Owners, LLC, (“Petitioner” or “Holland”) filed a petition for declaratory order on May 29, 2019 (the “Petition”) and Consolidated Rail Corporation (“Conrail”) responded on August 19, 2019. On August 30, Petitioner filed a Motion for Leave to File a Reply to Reply (the “Motion”) and a Reply to Conrail’s Reply (the “Sur-Reply”). Conrail hereby replies to Petitioner’s Motion.

In the Petition, Holland several times states its request for declaratory relief broadly.¹ Understandably, Conrail’s Reply addressed the broadly-stated requested relief and the narrower

¹ E.g., Petition at 1 (“First, to the best of Holland Park’s knowledge, Conrail never exercised the rights conferred by the easement or engaged in rail service on the Property.”); Id. at 2 (“Despite the fact that there has been no track on the Property for some time, Conrail nonetheless, has communicated to Holland Park its view that its easement continues to burden the Property”); and Id. (“The facts compel the

relief. Conrail, contrary to Holland's assertion, did not misstate the requested relief and the Motion cannot be granted on that basis. Conrail does not oppose Petitioner's Motion, because the Sur-Reply purports to clarify the relief sought by Petitioner. Petitioner now asserts that it seeks a declaration on "whether the right to provide freight service subject to the jurisdiction of the STB has been terminated" on the property now owned by Holland.² Petitioner also notes that answering this question requires the Board to determine "whether [track on the Holland property] was (or would have been) spur track." Sur-Reply at 5.

ARGUMENT³

Even as clarified, the STB must deny the Petition because the United States District Court for the District of Columbia (the "District Court"), as successor to the Special Court created by the Regional Reorganization Act of 1973 (the "Special Court"), has original and exclusive jurisdiction to determine whether Conrail's right to provide freight service subject to STB jurisdiction on the Holland property has been terminated.

That the track rights in Conrail's original easement on what is now the Holland property were granted pursuant to the Final System Plan ("FSP") and the Special Court's Conveyance Order, which was confirmed by Congress in the Railroad Revitalization and Regulatory Reform Act of 1976, P.L. 94-210, 90 Stat. 31, is not in contention. The District Court, as successor to the Special Court, has original and exclusive jurisdiction over "any action ... to interpret, alter,

conclusion that Conrail has abandoned its easement because" there is no track, there is no connecting track and there are no shippers). Even the block quote from the Petition restated on page 1 of the Sur-Reply refers to Conrail's alleged abandonment of the "freight easement." See Sur-Reply at 1

² Sur-Reply at 1-2. Elsewhere, the Sur-Reply says Holland the question is whether freight service "on and to" the Holland property has been abandoned. *Id.* at 4. Conrail assumes the requested relief relates solely to the Holland property.

³ If the Board grants the Motion, then pursuant to the authority stated in footnote 1 of the Motion, Conrail hereby moves that the Board also accept this Reply to Petitioner's Sur-Reply

amend, modify, or implement” any Special Court order to convey property included in the FSP. 45 U.S.C. § 719(e)(2). If the Board rules that Conrail’s right to provide freight service subject to the jurisdiction of the STB on the Holland property has been terminated, the Board necessarily would “alter,” “amend” and “modify” the Conveyance Order. See Conrail Reply at 4-5. Notably, Holland did not address this point in the Sur-Reply. The Board lacks jurisdiction to “alter, amend [or] modify” the Conveyance Order.

In addition, even before ruling on the requested relief, the Board would need to “interpret” the Conveyance Order, because in order to determine whether Conrail had abandoned its track easement rights, the Board would need to define Conrail’s track easement rights. Petitioner asserts that it has evidence supporting its argument that the track rights have been abandoned.⁴ Assuming for the purposes of argument that the Board finds Petitioner’s evidence to be sufficient and persuasive, that would not confer jurisdiction on the Board to interpret the Conveyance Order. Petitioner confuses what it considers an easy answer with one the Board has authority to give. The STB has no jurisdiction to interpret the Conveyance Order.

As noted in the Conrail Reply, the declaratory relief requested by Petitioner also would require the STB to interpret the FSP, which also is beyond the Board’s purview. Conrail Reply at 5-7 and 8, relying in part on *Consolidated Rail Corp. v. Surface Transportation Board*, 571 F. 3d 13 (D.C. Cir. 2009)(“*Conrail v. STB*”) Petitioner argues that *Conrail v. STB* is distinguishable because “Holland has not asked, nor is there a need to determine, whether the trackage was conveyed by the FSP as part of Conrail’s railroad lines.” Sur-Reply at 4.

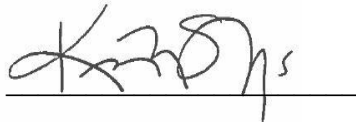
⁴ Even though Mr. Santoro’s Verified Statement says the specific purpose of his statement is to “address the question of whether there were tracks that served the Property and, if so, whether those tracks remain and whether it would be possible for a railroad to reach them to provide direct rail service” to the Holland property (Petition Exhibit A, Verified Statement of Steven H. Santoro at 1), there is no indication that Mr. Santoro or even anyone on his staff physically inspected the Holland property.

However, on the very next page Holland does ask the Board determine “whether [track on the Holland property] was (or would have been) spur track.” Sur-Reply at 5. In granting the relief requested by Petitioner, the Board would need to first determine whether the track rights were conveyed by the FSP as part of Conrail’s railroad lines. Thus, *Conrail v. STB* is directly on point.

CONCLUSION

For the foregoing reasons, the Board should deny Holland’s Petition for Declaratory Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. M. Sheys", written over a horizontal line.

Kevin M. Sheys
Edward J. Fishman
Hillary B. Neger
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street N.W.
Washington, DC 20004
(202) 637-5600

Jonathan M. Broder
Jocelyn G. Hill
Consolidated Rail Corporation
1717 Arch Street
Suite 1310
Philadelphia, PA 19103
(215) 209-5020

Attorneys for Consolidated Rail Corporation

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CERTIFICATE OF SERVICE

I, Carolyn Kraska, hereby certify that on September 10, 2019, a true and correct copy of the Reply to Petition for Declaratory Order was sent via electronic mail to the following:

Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
1634 Eye (I) Street, NW
Washington, DC 20006
Cspitulnik@Kaplankirsch.Com

Jonathan Broder
Vice President – Corporate Development and Chief Legal Officer
Consolidated Rail Corporation
1717 Arch Street, 13th Floor
Philadelphia, PA 19103
jonathan.broder@conrail.com



Carolyn Kraska