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October 23, 2002

BY HAND

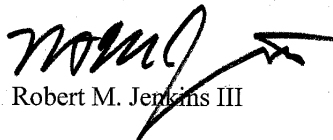
Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: Docket No. 34259
Chelsea Property Owners – Petition for a
Declaratory Order

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of
“Reply of Consolidated Rail Corporation to Chelsea Property Owners’ Petition for a Declaration
Order.” Please date-stamp the extra copy that is enclosed and return it to our representative.
Also enclosed is a diskette containing the Reply in electronic format.

Sincerely yours,


Robert M. Jenkins III

RMJ/bs

Enclosures

ENTERED
Office of Proceedings

OCT 23 2002

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Public Record

BEFORE THE
ENTERED SURFACE TRANSPORTATION BOARD
Office of Proceedings
OCT 23 2002
Part of
Public Record
FINANCE DOCKET NO. 34259



CHELSEA PROPERTY OWNERS – PETITION FOR A DECLARATORY ORDER

**REPLY OF CONSOLIDATED RAIL CORPORATION
TO CHELSEA PROPERTY OWNERS'
PETITION FOR A DECLARATORY ORDER**

Consolidated Rail Corporation (“Conrail”) replies here to the Petition for a Declaratory Order and supporting Memorandum filed October 1, 2002, by the Chelsea Property Owners (“CPO”). In its Petition and Memorandum, CPO seeks Board rulings on two related questions: (1) whether the Board would retain jurisdiction over the portion of Conrail’s West 30th Street Secondary Track (“Highline”) south of West 30th Street in New York City if the portion of the line north of West 30th Street were abandoned, and (2) whether, if the Board issued a certificate of interim trail use (“CITU”) to the City of New York (“City”), and the City entered into an agreement with Conrail pursuant to the Trails Act (16 U.S.C. 1247(d)), the City could demolish the Highline north of West 30th Street. CPO Memorandum at 1.

CPO previously filed a Motion on August 14, 2002, in Docket No. AB-167 (Sub-No. 1094)A (the “Abandonment Docket”),¹ seeking an order from the Board that the settlement agreement CPO has worked out with interested parties, including the City, meets the surety condition in the ICC’s September 16, 1992 Decision in that docket. Conrail has supported

¹ That docket was earlier denoted as Docket No. AB-167 (Sub-No. 1094), without the “A” designation. We refer to the docket both before and after that designation as the “Abandonment Docket.”

CPO's August 14, 2002 Motion in the Abandonment Docket, and has urged that the proceedings therein be expedited as much as possible. The grant of that Motion by the Board and the effectuation of the transactions provided for in the settlement agreement will permit the abandonment of the Highline as a unity, as contemplated by the Board and the ICC in their decisions in the Abandonment Docket.²

In its Petition for a Declaratory Order, as Conrail understands it, CPO seeks the resolution of certain potential issues which the City has raised. Without taking a position regarding whether a declaratory judgment proceeding is advisable, Conrail makes the following comments on the two specific issues raised in CPO's Petition.

First, as to the "jurisdiction" question, Conrail advises the Board that it has never entertained, and would not consider, any plan for abandonment of only the portion of the Highline north of West 30th Street. No party has sought, or proposed to seek, an order from the Board permitting such a partial abandonment. The only authorization that any party has obtained to pursue abandonment of the Highline is the September 16, 1992 Decision that CPO obtained in the Abandonment Docket, permitting abandonment of the entire Highline if Conrail were protected against responsibility for any damage, expense or liability exceeding \$7 million. Thus, in short, the City is in no position, even if it wanted to, to obtain abandonment of only the portion of the Highline north of West 30th Street.

² Conrail notes that the Petition to Reopen the 1992 Order that was filed in the Abandonment Docket by The Friends of the Highline ("FHL") on August 16, 2002, does not take issue with the ICC's economic analysis or its surety condition. FHL's Petition addresses only certain historic preservation and environmental impact issues – regarding which Conrail takes no position other than a strong desire to see the Board's consideration of those issues expedited. *See* Reply of Consolidated Rail Corporation to "The Friends of the High Line, Inc.'s Petition to Reopen the 1992 Abandonment Decision," filed September 19, 2002 in the Abandonment Docket.

Second, as to the issue concerning "rails to trails," even assuming that a CITU can be issued in a case such as this, the fact remains that Conrail must agree to any Trails Act use of the Highline. See 16 U.S.C. § 1247(d); 49 C.F.R. § 1152.29. Conrail has made clear to all parties that it will not agree to any Trails Act proposal that does not provide the same insulation against all potential liability that is provided by the settlement agreement that CPO has already negotiated with Conrail and other parties. After dealing with this issue for many years and talking with many parties, Conrail believes that any possible trails conversion with respect to the Highline at this late date and under current circumstances and conditions would require the direct involvement of, and perhaps even actual ownership by, a governmental entity. The analysis of any proposed alternative use for a structure of this magnitude is bound up with the public interest and must be made by a public entity with governmental powers. Further, the anticipated cost of preservation would undoubtedly require public funding and therefore public indemnification of the railroad. No such Trails Act proposal has been forthcoming, and it is highly questionable that any will be.

Conrail respectfully asks the Board to take the above comments into account in acting on CPO's Petition.

Respectfully submitted,



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October 23, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply have been served this 23rd day of October 2002, by first-class mail, postage prepaid upon the following persons.

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