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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *New Jersey Association of Railroad Passengers and National Association of Railroad Passengers – Petition for Declaratory Order – Princeton Branch, Finance Docket No. 35745*

Dear Ms. Brown:

I am enclosing the Verified Reply of New Jersey Transit Corporation in the above-referenced proceeding.

Sincerely,

Charles A. Spitulnik

Enclosure

cc: All Parties of Record

**Before the
Surface Transportation Board**

Finance Docket No. 35745

**NEW JERSEY ASSOCIATION OF RAILROAD PASSENGERS AND
NATIONAL ASSOCIATION OF RAILROAD PASSENGERS
– PETITION FOR DECLARATORY ORDER –
PRINCETON BRANCH**

VERIFIED REPLY OF NEW JERSEY TRANSIT CORPORATION

Dated: July 15, 2013

Communications with respect to this document
should be addressed to:

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

E-mail: cspitulnik@kaplankirsch.com
epilsk@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for New Jersey Transit Corporation

**Before the
Surface Transportation Board**

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NATIONAL ASSOCIATION OF RAILROAD PASSENGERS
– PETITION FOR DECLARATORY ORDER –
PRINCETON BRANCH**

VERIFIED REPLY OF NEW JERSEY TRANSIT CORPORATION

The New Jersey Transit Corporation (“NJ Transit”), an instrumentality of the State of New Jersey pursuant to New Jersey Statutes Annotated 27:25-1 *et seq.*, hereby submits this Reply in response to the Petition for Declaratory Order filed in this docket by the New Jersey Association of Railroad Passengers and National Association of Railroad Passengers (“Petitioners”) on June 21, 2013 (the “Petition”). Because comments in this Reply address arguments presented by Save the Dinky, Inc. (“Save the Dinky”), in its Reply, filed in this matter on July 9, 2013 (“SDKY Reply”), NJ Transit respectfully seeks the Board’s leave to file a reply to that reply in the interest of creating a complete record.

NJ Transit provides passenger commuter rail service over 544 track miles of lines owned by NJ Transit and 309 miles of track owned by others (227 miles of Amtrak’s Northeast Corridor and 82 miles on track owned by Metro North) throughout the state of New Jersey, and to Philadelphia and New York. The Petition addresses a small shift in location of a passenger station on the 2.9-mile long branch line used to provide shuttle service between Princeton Junction and Princeton. All passenger service to the station will continue without diminution of the existing schedule. As NJ Transit demonstrates below, this matter involves a minor alteration

of facilities used by an operator not subject to STB jurisdiction to conduct service not subject to STB jurisdiction over a line not subject to STB jurisdiction. In addition, the Petition is not aimed primarily at NJ Transit's passenger rail service, about which Petitioners allege no shortcomings with respect to any of the fundamental components of frequency of service, scheduling, or coordination with NJ Transit's mainline train schedules. Instead, the Petition is the latest in a string of complaints before various tribunals – instigated by a small objector group – intended to delay development of an Arts and Transit complex by Princeton University in the area of the existing NJ Transit Princeton station. Accordingly, the STB must dismiss the Petition.

BACKGROUND

NJ Transit conducts regularly scheduled passenger commuter rail operations to the Princeton station, which is the terminus of the Princeton Branch (the “Line”) and has legal authority only to operate mass transportation services. N.J. Stat. Ann. §§ 27:25-3(a), 27:25-3(g), 27:25-5(h) and 27:25-5(j). Service on the Line consists of a shuttle train, colloquially known as the “Dinky,” between Princeton and NJ Transit's station at Princeton Junction on the Northeast Corridor. NJ Transit's predecessor agency, the Commuter Operating Agency, acquired the Line, identified as Line Code 1424, USRA Line No. 703, from Conrail in 1984, in accordance with the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985 (the “3R Act”), and the Final System Plan issued by the United States Railway Association pursuant to the 3R Act (the “Final System Plan”). Deed from Consolidated Rail Corp. to the State of New Jersey, acting by and through the Commuter Operating Agency of the New Jersey Department of Transportation, dated June 15, 1984, effective as of April 1, 1976, attached to the Petition as Exhibit B (the “Conrail Deed”).¹

¹ NJ Transit succeeded to the interests of the Commuter Operating Agency. N.J. Stat. Ann. §§ 27:25-21, 27:25-24. Consequently, we will refer to the Commuter Operating Agency as NJ Transit for the purposes of this Reply.

Conrail conveyed the Line to NJ Transit pursuant to Section 206(c)(1)(D) of the 3R Act, which designated lines for purchase or lease from Conrail “by a State or a local or regional transportation authority to meet the needs of commuter and intercity passenger rail service.” Conrail Deed at 1. The Final System Plan characterized the lines to be conveyed pursuant to Section 206(c)(1)(D) as “used or useful in passenger service” and “not otherwise needed by ConRail for freight operations.” Final System Plan, Volume I at 327. Alternatively, in the event the Line had not been purchased for continued passenger use, the Final System Plan designated it for potential use as a recreational trail. Final System Plan, Vol. II at 521. Conrail did not retain a freight operating easement on the Line when it conveyed all of its property rights, with the exception of certain utility easements, to NJ Transit. Conrail Deed at A, D. Accordingly, the Line was conveyed for the purpose of continuing commuter passenger service to Princeton or for public use as a recreational trail. Any freight use on the Line ceased with Conrail’s transfer of its interests to NJ Transit.

In late 1984, NJ Transit transferred the station buildings, platform, and real estate underlying the northernmost 1000 feet of the Line to Princeton University. The University acquired title to the real property and “all structures, if any,” and NJ Transit retained title to “rail, ties, catenary system, signal system and any other fixtures on the property related to the physical operation of the train.” Sales Agreement between NJ Transit and the Trustees of Princeton University, dated October 30, 1984, attached to the Petition as Exhibit I (the “Sales Agreement”), Sec. 3. Princeton University (the “University”) did not acquire any right to force NJ Transit to discontinue service, and NJ Transit retained all control over the use or removal of “railroad or other passenger-related equipment, trackage or other property,” and the right to “expand, reduce, terminate or alter the type of passenger-related services within or serving the station parcel.” Sales Agreement, Sec. 17. NJ Transit retained an easement over the property for public

transportation purposes, including the “right of way along existing tracks,” station, and station platform. Termination of the easement was effective only following the termination of passenger service on the property by NJ Transit; the University acquired no right to terminate the easement or cause NJ Transit to do so. Deed from New Jersey Transit Corp. to the Trustees of Princeton University, dated December 5, 1984, and Corrected Deed from New Jersey Transit Corp. to the Trustees of Princeton University, dated April 29, 1985, attached to the Petition as Exhibit J (“NJ Transit Deeds”).

The Sales Agreement established a framework for cooperation between NJ Transit and the University through which the University obligated itself to improve and maintain the station buildings, platform, and parking facilities serving the station. Sales Agreement at 3, 16. The University obtained the right to cause NJ Transit to shift the terminus of the Line further south, but did not acquire the right to perform such work itself or to interfere with or dictate any terms of NJ Transit’s commuter rail service. Sales Agreement at 3.d. Over the past several years, NJ Transit and the University have cooperated in the University’s effort to plan and obtain the various regulatory approvals necessary for the development of an Arts and Transit District immediately to the southwest of the existing station buildings.² The Arts and Transit District will incorporate the existing station buildings through their adaptive re-use as a café and restaurant. The 150 street parking spaces that currently serve the station will be replaced with a corresponding number of spaces around the new station, and street improvements will include enhanced vehicular access and bus connections at the station.

Construction of the Arts and Transit District will require new station facilities to be located 460 feet south of the existing station. NJ Transit is not proposing any changes to the schedule or manner of the Dinky service. To illustrate, this minor relocation will move the

² See: http://www.princeton.edu/facilities/info/major_projects/newconstruction/LewisArtsBuilding/ (last visited July 15, 2013).

station a distance equal to that of the walk from the main lobby of the STB's offices to the entrance of the Residence Inn on E Street, SW, or less than the length of a midtown Manhattan crosstown block, but will otherwise not alter any facet of NJ Transit's existing service.

DISCUSSION

Petitioners' arguments must fail because the STB has no jurisdiction over NJ Transit or over the Line. Petitioners argue that: (a) NJ Transit is subject to the Board's jurisdiction; (b) NJ Transit's proposed relocation of its station facilities constitutes an abandonment subject to STB jurisdiction; and (c) Princeton University was required to obtain Interstate Commerce Commission ("I.C.C.") authority for its acquisition of the real property interests in a portion of the Line, along with the station buildings and platform. These arguments find no support in relevant statutes or decisional law, and should be rejected.

A. The Board does not have jurisdiction over NJ Transit

49 U.S.C. §10501(c)(2)(A) provides that the STB "does not have jurisdiction under this part over mass transportation provided by a local governmental authority," as the terms "mass transportation" and "local governmental authority" are defined in 49 U.S.C. § 5302(a). A "local governmental authority" is defined at 49 U.S.C. § 5302(6) to include "a public corporation, board, or commission established under the laws of a State." NJ Transit was formed by state statute in 1979 as "a body corporate and politic with corporate succession" and "as an instrumentality of the State exercising public and essential governmental functions." New Jersey Statutes Annotated 27:25-4(a). Therefore, NJ Transit is a "local governmental authority" pursuant to 49 U.S.C. §§ 5302(6) and 10501(c)(2)(A).

"Mass transportation" is defined at 49 U.S.C. § 5302(7) as "public transportation," which includes "transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, sightseeing, or intercity bus

transportation or intercity passenger rail transportation provided by [Amtrak] (or a successor to such entity),” as set forth at 49 U.S.C. § 5302(10). NJ Transit, as the operator of regularly scheduled passenger commuter rail service on behalf of the State of New Jersey, clearly operates mass transportation pursuant to 49 U.S.C. § 5302(10). Petitioners readily illustrate this point in describing NJ Transit’s passenger rail service area, schedules, and connections to analogous service in New York and Pennsylvania. Petition at 4-5, Exhibits C – F.

Because NJ Transit’s service to Princeton is “mass transportation provided by a local governmental authority,” the STB does not have jurisdiction over NJ Transit or NJ Transit’s service to Princeton pursuant to the express terms of 49 U.S.C. § 10501(c)(2)(A). The STB has specifically recognized its lack of jurisdiction over NJ Transit on two occasions, when it has granted NJ Transit’s motions to dismiss exemptions for the acquisition of interests in freight rail property for lack of jurisdiction on the basis that NJ Transit is a non-carrier. *New Jersey Transit Corp. – Acquisition Exemption – Certain Assets of Consolidated Rail Corp.*, STB Finance Docket No. 33786 (Service Date Feb. 15, 2000), slip op. at 3 (“[w]e see no basis for finding that our approval is required for the transaction or finding that NJ Transit will become a rail carrier under our jurisdiction”); *New Jersey Transit Corp. – Acquisition Exemption – Norfolk Southern Ry. Co.*, STB Docket No. FD 35368 (Service Date March 27, 2013), slip op. at 1. Because the STB lacks jurisdiction over NJ Transit, the Petition should be dismissed.

B. Petitioners’ Arguments Fail to Bring NJ Transit’s Service Within the STB’s Jurisdiction

Implicitly recognizing that NJ Transit and its Dinky service are not subject to STB jurisdiction, Petitioners advance several theories in an attempt to invoke STB jurisdiction. None are sufficient to overcome the express statutory exclusion from Board jurisdiction set forth in 49 U.S.C. § 10501(c)(2)(A).

First, Petitioners rely heavily on this Board’s decisions in *DesertXpress Enterprises, LLC – Petition for Declaratory Order*, STB Finance Docket No. 34914 (Service Date June 27, 2007) (“*DesertXpress I*”) and (Service Date May 7, 2010) (“*DesertXpress II*”), and the dissent in *All Aboard Florida-Operations LLC and All Aboard Florida-Stations – Construction and Operation Exemption – In Miami, Fla. and Orlando, Fla.*, STB Docket No. FD 35680 (Service Date December 21, 2012) (“*All Aboard Florida*”), to argue that the STB has jurisdiction over passenger rail providers. Petition at 9-11. These cases are inapposite, however, because neither case involved passenger rail service provided by a “local governmental authority.” In both *DesertXpress* and *All Aboard Florida*, the entities at issue were privately-owned railroad companies. *DesertXpress I* at 3; *DesertXpress II* at 2, 13; *All Aboard Florida* at 3. As the Board expressly observed, “49 U.S.C. § 10501(c)(2) . . . now specifically limits the Board’s authority over mass transportation provided by a local governmental authority, a situation not present here.” *DesertXpress II* at 13. The Board also pointed out that the I.C.C. Termination Act of 1995 (“ICCTA”) expanded the statutory exception for local transit, and compared the limited scope of the exemption in the former provision³ to the more general, objective exemption of a “local governmental authority” providing “mass transportation,” as those terms are defined by statute. *DesertXpress II* at 13 (discussing legislative history). Accordingly, because NJ Transit is a “local governmental authority” pursuant to 49 U.S.C. § 10501(c)(2)(A) and 49 U.S.C. § 5302(6), in contrast to the entities seeking to provide passenger service in *DesertXpress* and *All Aboard Florida*, the plain language of the statute excludes NJ Transit from the Board’s jurisdiction.

³ Under the prior version of 49 U.S.C. § 10501(c), mass transportation provided by a local governmental authority was exempted from I.C.C. jurisdiction only if the fares were “subject to the approval or disapproval of the chief executive officer of the State in which the transportation is provided.” *DesertXpress II* at 13, n.46.

Second, Petitioners assert that a passenger line that operates between points in two or more states will be subject to the Board's authority over interstate rail operations. Petition at 12-14. This argument fails for the simple reason that the definition of a "local governmental authority" operating "mass transportation" is not limited to those agencies providing solely intrastate public transportation. As the STB observed in *DesertXpress II*, ICCTA substantially narrowed federal jurisdiction over passenger rail transportation and limited the scope of the Board's jurisdiction by excluding all mass transportation (including commuter rail services) operated by a local governmental authority. *DesertXpress II* at 13, n. 46. The Board observed that the former definition imposed "a significant limitation for any commuter operations provided by a regional, multi-state authority, as may occur in metropolitan areas that cover more than one state," which was removed by Section 10501(c)(2)(A). *Id.* Thus, Section 10501(c)(2)(A)'s carve-out for state-operated commuter service excludes from the STB's jurisdiction state-owned commuter operators providing service in more than one state.⁴ *MBCR* at 2-3. The Board has specifically found that a state-owned commuter rail provider is not subject to Board jurisdiction even when such provider is considered a common carrier providing interstate transportation under 49 U.S.C. §§ 10102(5) and 10501(a). *Massachusetts Bay Commuter R.R. Co., LLC – Petition for Declaratory Order*, STB Finance Docket No. 34332 (Service Date June 5, 2003) ("*MBCR*"), slip op. at 2-3 (dismissing petition and finding that the Massachusetts Bay Commuter Railroad Co. was not subject to STB jurisdiction under 49 U.S.C. § 10501(c)(2) even though it operates between two or more states). The fact that NJ Transit operates service into

⁴ Petitioners cite *California High-Speed Rail Authority – Construction Exemption – In Merced, Madera and Fresno Counties, Cal.*, STB Docket No. FD 35724 (Service Date June 13, 2013) for the principle that this Board may find that it has jurisdiction over passenger rail operations occurring entirely within a state. In that case, the California High Speed Rail Authority stipulated that its operations would constitute "transportation by rail carrier" within the definition of 49 U.S.C. § 10501 and did not seek to be subject to the exclusion from Board authority for a "local governmental authority" under 49 U.S.C. § 10501(c)(2). *California High-Speed Rail Authority – Construction Exemption – In Merced, Madera and Fresno Counties, Cal.*, Motion to Dismiss Exemption, STB Docket No. FD 35724 (Filed March 27, 2013), at 5, n.10. The Board's decision did not address the scope or applicability of Section 10501(c)(2) to the California High Speed Rail Authority.

New York and Pennsylvania does not change the fact that NJ Transit is a “local governmental authority providing mass transportation” that is not subject to STB jurisdiction pursuant to 49 U.S.C. § 10501(c)(2)(A).

Third, Petitioners argue that *Fitchik v. New Jersey Transit Rail Operations, Inc.*, 678 F.Supp. 465 (D. N.J. 1988), stands for the proposition that the United States District Court for the District of New Jersey “found” that NJ Transit was a common carrier providing interstate service subject to the jurisdiction of the STB. Petition at 12. However, *Fitchik* is not persuasive authority and has been superseded by the enactment of ICCTA in 1995. Generally, the Court in *Fitchik* merely stated by way of description, without analysis or citation, that a subsidiary of NJ Transit “operates as a common carrier both within and without the State of New Jersey and is engaged in interstate commerce as that phrase is normally understood.” *Fitchik*, 678 F.Supp. at 466. That conclusion is not supported by any legal or factual analysis and cannot be understood as a “finding” or “holding.” Furthermore, ICCTA expressly excluded entities like NJ Transit from Board jurisdiction at 49 U.S.C. § 10501(c)(2)(A). As the Board found in *New Jersey Transit Corp. – Acquisition Exemption – Certain Assets of Consolidated Rail Corp.*, STB Finance Docket No. 33786 (Service Date Feb. 15, 2000), slip op. at 3, “[w]e see no basis for finding that our approval is required for the transaction or finding that NJ Transit will become a rail carrier under our jurisdiction”; Accord, *New Jersey Transit Corp. – Acquisition Exemption – Certain Assets of Norfolk Southern Ry. Co.*, STB Finance Docket No. 33786 (Service Date March 27, 2013), slip op. at 1. *See also* MBCR at 2-3.

Fourth, Petitioners concede that the STB has no jurisdiction over NJ Transit’s services, but maintain that the STB retains jurisdiction over the facilities by which NJ Transit provides those services. Petition at 15. Leaving aside the impossible practical circumstances that would arise if the STB could direct the alteration or disposition of facilities used solely for service over

which it has no jurisdiction, Petitioners' argument is not supported by a plain reading of the relevant statutes, and is incorrect as a matter of law. Petitioners' theory is that 49 U.S.C. § 10501(c) somehow distinguishes between facilities and services in defining the scope of NJ Transit's exclusion from STB jurisdiction. This theory is contrary to the plain terms of Section 10501(c), which clearly encompass both services and facilities. The definitions of "mass transportation" and "public transportation" at 49 U.S.C. § 5302(a) refer to "transportation" without distinguishing between services and facilities. "Transportation" is broadly defined at 49 U.S.C. § 10102(9) to include, as relevant here, "a locomotive, car, vehicle, . . . property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use." Therefore, "transportation," "mass transportation," and "public transportation" all encompass the entity providing service, the service itself, and the facilities the operator uses to provide that service. Accordingly, the 49 U.S.C. § 10501(c) exclusion of entities such as NJ Transit from STB jurisdiction includes all elements of NJ Transit's passenger commuter rail operations, including both services and facilities.

Because NJ Transit is excluded from the STB's jurisdiction, it is not required to seek abandonment authority to discontinue the use of any of its facilities. Here, the replacement of the existing station buildings and platforms a short distance along the Line will effect no functional change to NJ Transit's service. NJ Transit will discontinue use of the existing station buildings, which the University proposes for adaptive re-use as a restaurant and café, and NJ Transit will construct a station and platform in the new location in order to continue providing its passenger service on the same schedule it operates today. But even if the minor shift in location of the existing station were considered an abandonment, the plain language of 49 U.S.C. § 10903(a)(1) provides that STB authority over rail abandonment only extends to a "rail carrier

providing transportation subject to the jurisdiction of the Board under this part.” Since NJ Transit is excluded from STB jurisdiction pursuant to 49 U.S.C. § 10501(c)(2)(A), NJ Transit is not a “rail carrier providing transportation subject to the jurisdiction of the Board” and is therefore not required to seek Board authority to discontinue the use of the existing station buildings, platforms, and 460 feet of track at the end of the line as an incidental consequence of the station relocation.

Petitioners suggest that even if NJ Transit is not subject to Board jurisdiction, the University, which is not a local governmental authority, may be required to seek abandonment approval from the Board. Petition at 15, n.13. But the University is clearly not a “rail carrier providing transportation subject to the jurisdiction of the Board.” As a result, under the plain language of 49 U.S.C. § 10903(a)(1), the University is not subject to any requirement to abandon.

Fifth, Petitioners suggest that the relocation of the station 460 feet from its current location somehow implicates Board jurisdiction because it affects the public convenience and necessity. Petition at 7. Petitioners argue that the additional walking distance to the station (which they estimate at 700 feet) is so substantial that it impairs the public convenience and necessity. On its face, this argument lacks merit. The simple relocation of a platform by a distance shorter than most city blocks does not per se implicate the Board’s jurisdiction, and Petitioners cite no authority for the notion that causing some commuters to walk an additional several hundred feet to a train station implicates the public convenience and necessity. This argument also ignores the substantial improvements to access for the great majority of commuters attributable to roadway reconfigurations, including enhanced vehicular access and bus access. More fundamentally, however, NJ Transit and its service and facilities on the

Princeton Branch are beyond the Board's jurisdiction as detailed above, and nothing about increased walking distance to the new station changes that.

Finally, in its Reply to the Petition, Save the Dinky argues that, because freight service was once operated on the Line, a common carrier obligation exists on the Line and must be extinguished before any track can be removed, regardless of NJ Transit's status as a commuter rail provider not subject to STB jurisdiction. Save the Dinky asserts that the discontinuance and abandonment provisions at Section 304 of the 3R Act apply to the Line. SDKY Reply at 13. Save the Dinky supports this argument by asserting that its extensive search through I.C.C. records failed to discover evidence that the presumed freight obligation on the Line had been abandoned. SDKY Reply at Exhibit C, Affidavit of Michael E. Allen. Save the Dinky looked in the wrong place, however. Section 304 of the 3R Act only addressed lines transferred for continued freight, not passenger, service. Accordingly, Save the Dinky's references to Section 304 of the 3R Act are inapposite and the discontinuance and abandonment procedures set forth in that Section do not apply to the Line.

Formal I.C.C. (or STB) action was not necessary because the 3R Act and ICCTA removed any presumptive or dormant freight obligation on the Princeton Branch without the need for further regulatory action. As discussed above, Section 206(c)(1)(D) of the 3R Act established a category of lines to be sold or leased from Conrail "by a State or a local or regional transportation authority to meet the needs of commuter and intercity passenger rail service." The Final System Plan characterized the specific lines designated for conveyance under Section 206(c)(1)(D) as "not otherwise needed by Conrail for freight operations." Final System Plan, Volume I at 327. The Princeton Branch was so designated in the Final System Plan. Indeed, the Final System Plan determined that in the event the Princeton Branch was not acquired for the

provision of commuter service, it was appropriate for use as a recreational trail, not as a freight line. Final System Plan, Vol. II at 521.

Moreover, as the STB has recognized, a passenger operator acquiring lines for passenger service under the 3R Act did not acquire rights or obligations to provide freight service on those lines, and any freight operations on those lines required separate freight easements.

Massachusetts Coastal R.R., LLC – Acquisition – CSX Transportation, Inc., STB Finance Docket No. 35314 (Service Date March 29, 2010), slip op. at 4 (describing Amtrak’s acquisition of the Northeast Corridor from Conrail under the 3R Act, and stating, “[s]ignificantly, Amtrak did not acquire the rights or obligation to provide freight service in the Northeast Corridor. Rather the selling rail carriers retained freight rail easements over the lines.”). Here, Conrail retained no freight easement when it transferred the Line to NJ Transit (Conrail Deed at A, D), and NJ Transit acquired no residual common carrier obligation because of the specific designation to passenger use on the Line in the Final System Plan. Accordingly, no freight obligation survived the designation of the Princeton Branch as a commuter line, and no freight obligation remains to be abandoned.

C. Princeton University was not required to obtain I.C.C. authority to acquire real property interests from NJ Transit in 1984

Petitioners argue that the University’s acquisition of the real estate on which the northernmost portion of the Princeton Branch lies, including the station and related facilities, required I.C.C. approval. Petition at 13-14. Petitioners appear to suggest that the University’s failure to obtain I.C.C. authority for its acquisition somehow gave rise to a “residual” common carrier obligation. It is not necessary to address the nature or consequences of any supposed “residual” common carrier obligation on the University’s part as a result of the 1984 sale because

the premise of Petitioner's argument is wrong – no obligation to seek I.C.C. authority was required for the University to obtain only real property interests.

49 U.S.C. § 10501(b) grants this Board exclusive jurisdiction over the acquisition of rail lines. However, the I.C.C. and this Board have held that the purchaser acquires no common carrier obligation and that a transaction is not subject to STB jurisdiction when a non-carrier (which may be a public or private entity), in a voluntary transfer of rail property, seeks only to acquire the underlying real estate associated with a line and will have no ability to interfere with rail service on the line, and where the operating entity retains an easement or other long-term property interest providing unrestricted access for the operator's exercise of its common carrier obligation. *See, Midtown TDR Ventures LLC – Acquisition Exemption – American Premier Underwriters, Inc., the Owasco River Ry., Inc. and American Financial Group, Inc.*, STB Finance Docket No. 34953 (Service Date February 12, 2008), slip op. at 3 (authorization is not required “when the common carrier rights and obligation that attach to the line will not be transferred”); *The State of Texas, Dep't of Transp. – Petition for Declaratory Order Regarding Highway Construction in Tarrant Co., TX*, STB Finance Docket No. 32589 (Service Date Feb. 7, 1995), 1995 WL 44836 (I.C.C.), slip op. at *4 (transaction was “limited to the land and does not include the track or any other rail property” and seller retained an easement to perform common carrier service); *Missouri River Bridge Co. – Acquisition Exemption – Certain Assets of Chicago, Central & Pac. R.R. Co.*, STB Finance Docket No. 32384 (Service Date March 3, 1994), 1994 WL 61756 (I.C.C.), slip op. at *3 (seller “retains a permanent easement that will enable it to perform its common carrier obligation, and the sale and operating agreements give it more than sufficient power over the operation and maintenance of the [assets] to avoid any interference or influence by [buyer]”). *See also, Maine DOT – Acquisition Exemption, Maine Central R.R. Co.*,

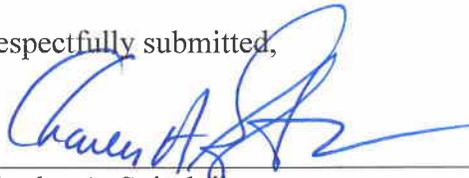
8 I.C.C.2d 835, 837 (1991) (no reporting requirement because “no common carrier rights or obligations are being transferred”).

In the 1984 transaction between NJ Transit and the University, the University acquired land and buildings, but no right to interfere with or dictate the terms of NJ Transit’s operations. Sales Agreement Secs. 3, 17, Schedule B, and NJ Transit Deeds. NJ Transit retained ownership of all rail facilities, including the track, along with a railroad easement permitting use of the facilities purchased by the University. *Id.* NJ Transit’s passenger rail operating easement is not unilaterally terminable by the University, but only terminates by its terms following the cessation of use of the property by NJ Transit for passenger rail transportation purposes. NJ Transit Deeds. Because the University does not propose to operate its own rail service, and because the University’s purchase of the real estate underlying the Line did not interfere with NJ Transit’s service or use of railroad facilities, the University acquired no common carrier obligation and the Board has no jurisdiction over the transaction. *See, e.g., Midtown TRD Ventures*, Finance Docket No. 34953, at 2-3, n.3. Accordingly, these principles, as repeatedly enumerated by this Board, confirm that the University would not have had to seek I.C.C. authority for its purchase of real property interests from NJ Transit. *Id.*

CONCLUSION

For the foregoing reasons, the STB does not have jurisdiction over NJ Transit's decision to relocate its Princeton Station by 460 feet in order to accommodate Princeton University's proposed Arts and Transit District project. Accordingly, NJ Transit respectfully requests that the Board dismiss the Petition for lack of jurisdiction.

Respectfully submitted,



Charles A. Spitulnik

W. Eric Pilsk

Allison I. Fultz

Kaplan Kirsch & Rockwell LLP

1001 Connecticut Avenue, N.W.

Suite 800

Washington, DC 20036

Tel: (202) 955-5600

Emails: cspitulnik@kaplankirsch.com

epilsk@kaplankirsch.com

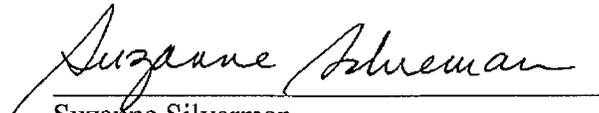
afultz@kaplankirsch.com

Counsel for New Jersey Transit Corporation

Dated: July 15, 2013

VERIFICATION

I, Suzanne Silverman, Senior Director of Contracts and Claims, Capital Planning and Programs Department, of the New Jersey Transit Corporation, verify under penalty of perjury that the facts recited in the foregoing Reply are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Reply.



Suzanne Silverman
Senior Director of Contracts and Claims
Capital Planning and Programs Department
New Jersey Transit Corporation

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Notice of Exemption of the New Jersey Transit Corporation to be served by first class mail, properly addressed and with postage prepaid, upon the following parties of record to this proceeding:

Eric M. Hocky
Clark Hill Thorp Reed
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103

Virginia Kerr
124 Jefferson Road
Princeton, NJ 08540

Peter McDonough
General Counsel
Princeton University
693 Alexander Road
Princeton, NJ 08540

Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177



Charles A. Spitulnik

Dated: July 15, 2013