

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35468

PINELAWN CEMETERY—PETITION FOR DECLARATORY ORDER

Decided: May 13, 2011

On February 3, 2011, Pinelawn Cemetery (Pinelawn) filed a petition for declaratory order asking the Board to declare that track in the “Farmingdale Yard” in Farmingdale, N.Y., is not now, nor ever has been, a “line of railroad” over which the Board has exclusive jurisdiction. Rather, petitioner argues, the track at issue is excepted spur track under 49 U.S.C. § 10906. Pinelawn is the owner of the property where the Farmingdale Yard is located. Pinelawn leased the Farmingdale Yard to the entity now known as the Metropolitan Transportation Authority, the parent of the Long Island Railroad (LIRR), in the early 1900s. New York and Atlantic Railway Company (NY&A) acquired all of LIRR’s freight operations, including its interest in the Farmingdale Yard, in 1997. N.Y. & Atl. Ry.—Operation Exemption—Long Island R.R., FD 33300 (STB served Jan. 10, 1997). The due date for filing replies is currently May 13, 2011.

By petition filed on May 2, 2011, Pinelawn requests leave to amend its petition for declaratory order pursuant to 49 C.F.R. § 1104.11, accompanied by an amended petition for declaratory order. Pinelawn states that, subsequent to its original petition for declaratory order, the United States Court of Appeals for the Second Circuit rendered an opinion in a related case concerning the Farmingdale Yard. New York & Atlantic Ry. v. STB, 635 F.3d 66 (2d Cir. 2011). Pinelawn now requests leave to file an amended petition to conform its legal theory to the intervening Second Circuit decision. Pinelawn argues that the amended petition will not unduly broaden the proceeding because the amended petition seeks virtually the same result and the factual record largely remains the same. Further, Pinelawn asserts that its amended filing will not prejudice any party because no party has submitted a reply.

In a response filed on May 4, 2011, NY&A states that it does not object to Pinelawn’s request to amend, but asks the Board to extend the date for replies so that it and LIRR will have sufficient time to respond to Pinelawn’s amended petition. NY&A states that it has conferred with Pinelawn and LIRR, and all parties have agreed that respondents should have until June 28, 2011, to reply to Pinelawn’s amended petition. All three parties assent to the requests to amend and to extend. The requests will be granted.

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

It is ordered:

1. Pinelawn's request for leave to file an amended petition for declaratory order is granted.
2. NY&A's request to extend the deadline for filing replies to Pinelawn's petition for declaratory order is granted.
3. Replies to Pinelawn's petition are due on or before June 28, 2011.
4. This decision is effective on its service date.

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