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SERVICE DATE - NOVEMBER 27, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34259

CHELSEA PROPERTY OWNERS–PETITION FOR DECLARATORY ORDER–HIGHLINE

Decided: November 25, 2002

Chelsea Property Owners (CPO) has requested the issuance of a declaratory order to resolve two issues relating to a 1.45-mile elevated rail line (known as the Highline) owned by Consolidated Rail Corporation (Conrail) in the Borough of Manhattan, NY.<sup>1</sup> Specifically, CPO requests a determination of whether: (1) the Board, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), would retain jurisdiction over the portion of the Highline south of 30th Street if the portion north of 30th Street were abandoned (thus depriving the southern portion of a connection to the national rail system); and (2) the demolition of the Highline north of 30th Street and the construction of an Olympic stadium over the right-of-way would be consistent with interim trail use under the Trails Act. For the reasons discussed below, the request for a declaratory order will be denied.

BACKGROUND

In a decision served in Chelsea Property Owners–Aban.–The Consol. R. Corp., 8 I.C.C.2d 773 (1992) (Chelsea), aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994), the Interstate Commerce Commission (ICC) authorized the abandonment of the Highline. Underlying the proceeding was an “adverse abandonment” application filed by CPO, a group seeking to redevelop the real estate occupied by the Highline. CPO asked for the abandonment authority in order to remove plenary Federal jurisdiction over the rail line and permit the condemnation of the property.

Conrail operated over the Highline pursuant to an easement whose termination terms require Conrail to absorb the cost of demolishing the viaduct. An abandonment constitutes termination under

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<sup>1</sup> The Highline is a segment of Conrail’s West 30th Street Secondary Track. It rises from grade level on steel columns near the corner of 34th Street and Eleventh Avenue just to the north of the 30th Street Rail Yards; loops around the northern, western, and southern perimeter of the 30th Street Rail Yards before turning south at 30th Street near Tenth Avenue; and extends south on a viaduct mostly to the west of Tenth Avenue until terminating at Gansevoort Street.

the easement. Based on CPO's representations, the ICC conditioned the abandonment authorization on CPO agreeing to indemnify Conrail for all demolition costs in excess of \$7 million and posting "an appropriate surety bond or similar security" to ensure payment. Chelsea at 792 and 794.

On August 14, 2002, CPO filed a motion in Chelsea Property Owners–Abandonment– Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, STB Docket No. AB-167 (Sub-No. 1094)A, requesting that an order be issued finding that a settlement agreement CPO negotiated with involved railroad and government interests, including The City of New York (City),<sup>2</sup> satisfies the indemnity condition. Friends of the High Line, Inc. (Friends), filed a reply in opposition to that motion on September 6, 2002. Friends also filed a petition to reopen the Chelsea decision on August 16, 2002. By decision served on October 29, 2002, the City has been granted an extension until December 17, 2002, to reply to CPO's August 14 motion and Friends' August 16 petition to reopen.

CPO filed the petition for a declaratory order at issue here on October 1, 2002. On October 23, 2002, Conrail and CSX filed replies without taking positions on the merits of the petition, and Friends and the City filed replies in opposition.

#### DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A review of CPO's petition indicates that there is no basis for instituting a declaratory order proceeding.

CPO contends that the City has submitted a bid to the United States Olympic Committee to be the United States candidate to host the 2012 Olympic games, that the bid commits the City to constructing an 86,000-seat Olympic stadium over the 30th Street Rail Yards which would necessitate the abandonment and demolition of the Highline in that location; and that this would sever the Highline south of 30th Street from its connection to the national rail system. At the same time, CPO claims that the City is considering whether to file a trail use request to preserve either the Highline structure and easements south of 30th Street or, in the alternative, the entire Highline south and north of 30th Street.

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<sup>2</sup> Rail interests include Conrail, Conrail Inc., New York Central Lines, LLC, and CSX Corporation and CSX Transportation, Inc. (jointly referred to as CSX). Besides the City, government interests include the New York City Economic Development Corporation, the New York Convention Center Development Corporation, the Metropolitan Transportation Authority, and the Triborough Bridge and Tunnel Authority.

Under either alternative, CPO claims that the Highline north of 30th Street would have to be abandoned and demolished.<sup>3</sup> CPO argues that this would sever the Highline south of 30th Street from the national rail system. According to CPO, the Board would lose jurisdiction over, and as a result be precluded from accepting trail use requests with respect to, the Highline south of 30th Street if that portion of the Highline were severed from the national rail system.

CPO contends that the City's interest in filing for trail use is based on a misunderstanding of the Board's jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, and contrary to the Trails Act and that it is threatening to undermine the settlement agreement in STB Docket No. AB-167 (Sub-No. 1094)A and put at risk the City's bid to host the 2012 Olympics. CPO claims that the proposed declaratory order proceeding should be instituted on an expedited schedule to clarify that trail use as envisioned by the City is not possible and that this would end the trail use controversy and allow CPO and the City to resolve remaining issues relating to the Highline's future.

The City contends that there is no controversy and as a result no basis for instituting a declaratory order proceeding. The City states that it has not yet taken a position on the legal principles governing the Board's jurisdiction, much less a position contrary to CPO's view that the Highline, if rail banked, must maintain a connection to the national rail system. The City claims that it is still reviewing studies and other materials analyzing the feasibility of trail use and ways to maintain a rail link between the Highline and the national rail system in a manner consistent with the development goals of the 30th Street Rail Yards. Asserting that it has not yet decided whether to file for trail use or the form such a request would take, the City argues that it would be premature to institute a declaratory order proceeding at this time.

There is no reason to institute a declaratory order proceeding to resolve issues that may never arise. The City's reply to CPO's motion and Friends' petition in STB Docket No. AB-167 (Sub-No. 1094)A is due on December 17, 2002. The issues CPO raises can be considered in the event the City's reply includes a trail use request.

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

It is ordered:

1. The petition for a declaratory order is denied.

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<sup>3</sup> CPO contends that no alternative right-of-way is available to carry the Highline from its grade level connection with the national rail system near 34th Street and Eleventh Avenue to the viaduct at 30th Street near Tenth Avenue.

2. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary