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SEC

SERVICE DATE - OCTOBER 18, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34259

CHELSEA PROPERTY OWNERS–PETITION FOR DECLARATORY ORDER–HIGHLINE

Decided: October 17, 2002

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 a 1.45-mile rail line (known as the Highline) owned by Consolidated Rail Corporation (Conrail) in the Borough of Manhattan, NY.¹ The application underlying the proceeding was an “adverse abandonment” application filed by the Chelsea Property Owners (CPO), a group seeking to develop the real estate occupied by the Highline. CPO asked for the abandonment authority to remove plenary Federal jurisdiction over the rail line.

Conrail operated over the Highline viaduct pursuant to an easement whose termination terms require Conrail to absorb the cost of demolishing the viaduct. An abandonment constitutes termination under the easement. Based on CPO’s representations, the ICC conditioned the abandonment authorization granted in the September 16 decision 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 interests² satisfies the indemnity

¹ The line, which runs along an elevated viaduct between 34th Street and Gansevoort Street, is a segment of Conrail’s West 30th Street Secondary Track.

² The rail interests include New York Central Lines, LLC, Consolidated Rail Corporation (Conrail), Conrail Inc., CSX Corporation (CSX), and CSX Transportation, Inc. (CSXT). The

(continued...)

condition.³ Friends of the High Line, Inc. (Friends), filed a petition to reopen the September 16 decision on August 16, 2002.⁴ Replies were filed by CPO and Friends and by Conrail individually and CSX and CSXT jointly.

On September 19, 2002, the City of New York (City) filed a motion requesting a 90-day extension, to December 17, 2002, to respond to CPO's motion in STB Docket No. AB-167 (Sub-No. 1094)A. On October 1, 2002, CPO filed a reply in opposition to City's extension request and the petition for a declaratory order in this proceeding. In the declaratory order petition, CPO requests that the Board resolve a dispute between CPO and City regarding the scope of the Board's jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, and the Trails Act. CPO claims that the dispute threatens to undermine the settlement agreement reached in the abandonment proceeding and to put at risk City's bid to host the 2112 Olympics. Friends, on October 16, 2002, filed a motion requesting a 2-day extension, to October 23, 2002, to respond to CPO's declaratory order petition. Friends states that the extension is necessary to compensate for the travel schedules of client representatives and counsel over the Columbus Day holiday weekend and that CPO does not object. The request 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. The due date for Friends and other interested persons to reply to the petition for a declaratory order at issue here is extended to October 23, 2002.

²(...continued)

government interests include The City of New York, New York City Economic Development Corporation, New York Convention Center Development Corporation, Metropolitan Transportation Authority, and Triborough Bridge and Tunnel Authority.

³ An earlier attempt by CPO to satisfy the indemnity condition was found inadequate in a decision in STB Docket No. AB-167 (Sub-No. 1094)A served on July 14, 1999.

⁴ Friends claims that the Highline is an historic structure that must be preserved and that its demolition would have far different environmental effects than those envisioned in the September 16 decision. Additionally, it claims to be working with public and private partners to raise the funds necessary to prepare the right-of-way for public use and potential transportation service under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary