

SERVICE DATE – AUGUST 9, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34818

CITY OF JERSEY CITY, RAILS TO TRAILS CONSERVANCY,
PENNSYLVANIA RAILROAD HARSIMUS STEM EMBANKMENT
PRESERVATION COALITION,
AND NEW JERSEY STATE ASSEMBLYMAN LOUIS M. MANZO–
PETITION FOR DECLARATORY ORDER

Decided: August 8, 2007

On January 12, 2006, the City of Jersey City, NJ (City), the Rails to Trails Conservancy, the Pennsylvania Railroad Harsimus Stem Embankment Coalition (Coalition), and State Assemblyman Louis M. Manzo (collectively, petitioners) filed a petition for declaratory order under 5 U.S.C. 554(e). Petitioners ask the Board to determine whether Consolidated Rail Corporation (Conrail) needs prior agency authorization to abandon trackage known as the Sixth Street Embankment (Embankment), extending between milepost 1.3 near Luis Munoz Marin Boulevard (formerly Henderson Avenue) and milepost 2.54 near Waldo Avenue, in Jersey City, NJ. Petitioners contend that the Embankment was transferred to Conrail as a line of railroad under “Line Code 1420,” and therefore is subject to the Board’s abandonment regulation, but that Conrail recently sold the Embankment to SLH Properties (SLH)¹ for development as residential housing without obtaining abandonment authority from the Board.²

¹ SLH consists of 212 Marin Boulevard, L.L.C.; 247 Manila Avenue, L.L.C.; 280 Erie Street, L.L.C.; 317 Jersey Avenue, L.L.C.; 354 Coles Street, L.L.C.; 389 Monmouth Street, L.L.C.; 415 Brunswick Street, L.L.C.; and 446 Newark Avenue, L.L.C. By decision served January 24, 2006, SLH was granted leave to intervene in this proceeding.

² The petition is supported by United States Senators Robert Menendez and Frank R. Lautenberg, United States Representatives Frank Pallone, Steven R. Rothman, Robert E. Andrews, Donald M. Payne and Bill Pascrell, Jr., and Governor Jon S. Corzine. Letters supporting the petition were also received from the County of Hudson Department of Public Resources, Hamilton Park Neighborhood Association, Preservation New Jersey, East Coast Greenway Alliance, NY/NJ Baykeeper, Harsimus Cove Association, Metropolitan Waterfront Alliance, Historic Paulus Hook Association, Inc., the Jersey City Landmarks Conservancy, Inc., the North Jersey Transportation Planning Authority, Inc., and Bernard F. Kenny, Jr., Senate Majority Leader, State of New Jersey.

In separate replies filed on February 1, 2006, Conrail and SLH (jointly, respondents) agree that the Embankment was conveyed to Conrail in 1976 pursuant to the United States Railway Association's (USRA) Final System Plan (FSP). They claim, however, that the Embankment was not the line of railroad conveyed under Line Code 1420, but was merely ancillary industrial yard and spur track that is exempt from the Board's entry and exit regulation under 49 U.S.C. 10906 (formerly 49 U.S.C. 10907(b)). They state that therefore Conrail did not need authority to abandon the Embankment. Respondents note that Conrail previously sold track adjoining the Embankment for redevelopment with encouragement from the City without first seeking authority from the Interstate Commerce Commission (ICC) or the Board and that Conrail also has removed tracks, ties and bridges on the Embankment at the City's urging.

The Board instituted a declaratory order proceeding by a decision served on February 8, 2006. Pursuant to that decision, petitioners filed opening statements on March 10, 2006, and Conrail and SLH filed reply statements on April 24, 2006. Petitioners filed a rebuttal on May 9, 2006.

On May 23, 2006, SLH filed a petition for leave to file a reply along with a reply. On May 24, 2006, petitioners filed a motion for leave to file supplemental evidence, including a missing "Track Chart" (a schematic diagram of track). On May 26, 2006, and May 30, 2006, respectively, SLH and Conrail replied, asking that the Board strike a portion of petitioners' submission as redundant but not objecting to the filing of the Track Chart. Petitioners filed a pleading on June 1, 2006, responding to the SLH and Conrail filings. We will accept these supplemental filings to ensure a complete record.

BACKGROUND

The Embankment is part of a line historically known as the Harsimus Branch, which was constructed by the United New Jersey Railroad and Canal Company (UNJRCC) and leased in 1871 to the Pennsylvania Railroad Company (PRR), together with other UNJRCC-owned lines, for 999 years. What Conrail describes as the "UNJRCC main line" apparently ran between Newark, NJ, and Exchange Place in Jersey City, near the Hudson River. The Harsimus Branch connected with the UNJRCC main line at Waldo Avenue and continued over the Embankment into the Harsimus Cove Yard on the Hudson River. The PRR used the Harsimus Branch as part of that carrier's main freight route between the Midwest and Harsimus Cove Yard. Freight traffic moved over UNJRCC's main line from Newark and then over the Harsimus Branch into Harsimus Cove Yard. The Harsimus Cove Yard contained coal piers, warehouses, grain elevators, stockyards, and other facilities that were used to handle rail-marine traffic. The yard also had piers and float bridges to serve lighters and car floats to transfer cargo to vessels in the harbor and to piers and yards in Manhattan and Brooklyn and for through movement to other Northeast destinations. In addition, local shippers were served from trackage in Harsimus Cove Yard.

Constructed between 1901 and 1905 along Sixth Street in Jersey City, the Embankment consisted of 6 segments, each approximately 400 feet long and 100 feet wide, joined by plate girder bridges that spanned north-south streets. The 5 western segments were constructed on masonry walls and earthen fill. The easternmost segment, closest to Harsimus Cove Yard, was built largely as an earthen slope embankment. The embankment rose from a height of approximately 12 feet at the eastern end to approximately 35 feet at its western end.³

During the 1950's and 1960's, rail traffic at Harsimus Cove Yard began to decline. PRR merged into the Penn Central Transportation Company (Penn Central) on February 1, 1968.⁴ Penn Central relocated much of the rail-marine traffic from Harsimus Cove Yard to Penn Central's Greenville facility located several miles to the south.⁵ Traffic at the Harsimus Cove Yard continued to decrease, and, by the 1970's, parts of the yard were no longer used for rail service.

Penn Central declared bankruptcy in 1970, along with seven other railroads in the Northeast.⁶ In response, Congress enacted the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) (3R Act). The 3R Act established USRA to prepare a plan for restructuring the railroads in reorganization into a financially viable, self-sustaining rail system that ultimately became Conrail.

USRA issued its FSP on July 26, 1975, describing "rail properties" of the railroads in reorganization that would be conveyed to Conrail.⁷ Page 272 of the FSP listed UNJRCC properties to be transferred to Conrail. Included on the list was "Line Code 1420," described as the Harsimus Branch, running between milepost 1.0 in Jersey City and milepost 7.0 at Harrison,

³ See Exhibits E and I to petitioners' Petition for Declaratory Order.

⁴ See Pennsylvania R. Co.–Merger–New York Central R. Co., 327 I.C.C. 475 (1966) (Penn Central Merger).

⁵ The operating plan submitted in the Penn Central Merger proceeding proposed to retire a major portion of the Harsimus Cove Yard. Penn Central Merger, 327 I.C.C. at 1023.

⁶ The other bankrupt railroads were: The Reading Co., The Erie Lackawanna Railroad Company, the Lehigh Valley Railroad Company, the Boston & Maine Corp., Ann Arbor Railroad Co., Lehigh & Hudson River Railroad Company, and the Central of New Jersey Railroad Company. The Penn Central bankruptcy included the UNJRCC, as a lessor of Penn Central lines.

⁷ The term "rail properties" in the 3R Act and the FSP referred to both lines of railroad and ancillary track and facilities that were deemed used or useful for railroad purposes. See 45 U.S.C. 742.

NJ. The FSP indicated that yards, spur tracks, and other ancillary facilities associated with the rail lines designated to be acquired by Conrail would be conveyed automatically unless the FSP provided otherwise. Page 262 of the FSP indicated that portions of the Harsimus Cove Yard were transferred to Conrail.⁸

The property constituting Line Code 1420 was conveyed to Conrail by deed from Fairfax Leary, Trustee of the property of the UNJRCC, dated March 31, 1976.⁹ Exhibit A to the deed described the relevant property that was conveyed as follows:

Situate in the County of Hudson, State of New Jersey, and being The United New Jersey Railroad and Canal Company's line of railroad known as the Penn Central Harsimus Branch and being all the real estate property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.

Such line originates in the County at Harsimus Cove, passes through Journal Square, and terminates in the County near the junction with the Penn Central New York-Philadelphia Main Line, west of the New Jersey Turnpike Overhead Bridge.

The line of railroad described herein is identified as Line Code 1420 in the records of the United States Railway Association.

On April 1, 1976, Conrail began operating the rail system established in the FSP. It provided service to several shippers located on Hudson Street using the line identified as Line Code 1420, including the Embankment.

A Conrail memorandum submitted by petitioners dated January 17, 1985, indicates that, for the 12 months ending September 1984, Conrail handled 3,204 carloads for these shippers. According to that memorandum, the largest shipper was Colgate Palmolive Company, which received 1,068 carloads during this period. Five other shippers accounted for the remaining freight traffic. A Conrail memorandum dated January 15, 1988, indicates that traffic had declined to 637 cars in 1986. Conrail's last customer served by the line of railroad constituting Line Code 1420 was gone by 1992.

Even before Conrail began operating in the Jersey City area, the City had begun redevelopment efforts intended to replace the few remaining industrial operations in the area with office buildings, real estate complexes and other high-end commercial developments. The

⁸ The rest of the yard remained with the Penn Central trustees for disposition because it was not deemed used or useful for railroad purposes. See relevant pages of the FSP submitted as Exhibit C to Conrail's Reply Statement.

⁹ The deed was submitted in Appendix XVI to petitioners' Opening Statement.

City adopted detailed redevelopment plans for the Harsimus Cove Yard, and the Jersey City Development Agency (Agency) condemned some property that was not in active rail use. By the mid-1980's, most of the Harsimus Cove Yard trackage had been sold to developers or the Agency.

In 1984 and afterwards, the City asked Conrail to make available for redevelopment the underutilized railroad property and trackage. The City also urged Conrail to remove the Embankment. Apparently, Conrail agreed to dismantle the Embankment and sell the property after it completed a new track connection at Marion, NJ, to replace use of the Embankment for turnaround space. After completing the new connection in 1994, Conrail permitted the City and National Bulk Carriers, Inc., a private developer, to remove bridges on the Embankment.¹⁰

After the rail infrastructure was removed, Conrail allegedly offered to sell the Embankment to the City and entered into negotiations with the Agency. No public entity came forward to acquire the Embankment. In October 2002, Conrail put the parcels up for bid. The only bidder for the property was SLH.

In 2003, Conrail discussed a possible acquisition of the Embankment by the Coalition and the City, but the negotiations were unsuccessful. Conrail closed the sale of the parcels to SLH in July 2005.

The record includes 8 valuation maps for Line Code 1420 from the early part of the last century.¹¹ Six maps, identified as maps V-2.1, ST-1 through ST-6, depict trackage running west from the Hudson River to a main line connection. Also included are two maps, identified as maps V-1.01, ST-1 and ST-2, depicting the Embankment and the Harsimus Cove Yard. The maps detail the trackage that had been owned by UNJRCC and operated by PRR between Newark and Jersey City, including the UNJRCC line, the Harsimus Branch and Harsimus Cove Yard. The maps also describe track segments that had previously been sold and were not

¹⁰ See Statement of Conrail Witness Robert W. Ryan.

¹¹ The ICC had been required by the Valuation Act of 1913, Pub. L. No. 62-400, 37 Stat. 701, to establish the value of all property owned or used by railroads subject to its jurisdiction. The statute required each rail carrier to prepare maps to assist the ICC in valuing its property. See former 49 U.S.C. 10781 *et seq.* (1995). The valuation maps submitted in this proceeding were prepared after detailed surveys during 1915-1920 and were part of the ICC's valuation of the PRR, including UNJRCC, that was published in Pennsylvania R. Co., 22 Val. Rep. 1 (1929). The valuation of UNJRCC-owned lines is also available online at <http://broadway.pennsyrr.com/rail/prr/Corphist/urnj.html> (last visited July 17, 2007).

included in the rail property transferred to Conrail by the FSP in 1976.¹² For example, map V-1.01, ST-2 depicting the extensive trackage located in Harsimus Cove Yard indicates that nearly all of that trackage had been “sold.” And map V-2.1, ST-1 describes the trackage between Grove Street and Exchange Place at the Hudson River as “sold.”

Also included in the record are a PRR Track Chart dated December 31, 1965, a Penn Central Track Chart dated January 1, 1975, and Conrail Track Charts dated January 1, 1976, January 1, 1977, and January 1, 1980, all of which depict Line Code 1420, which is identified as the Harsimus Branch, as running between milepost 1.3 at Jersey City and milepost 7 at Kearny.¹³ Conrail also submitted a Track Chart, dated January 1982, showing the “Passaic and Harsimus Branch” that ran from milepost 0 at Waldo to milepost 9 near Kearny and included some trackage designated as Line Code 1421.¹⁴ This Track Chart does not include the Embankment or the Harsimus Cove Yard trackage.¹⁵

UNJRCC’s main line between Newark and Jersey City—a portion of which respondents claim constituted the line of railroad transferred under Line Code 1420—was abandoned and dismantled prior to the creation of Conrail. Before that it was used by PRR and the former Hudson & Manhattan Railroad Company (H&M) for rail passenger commuter service. H&M’s line ran underground beginning near Grove Street in Jersey City and continued through the Hudson Rapid Tubes tunnel to the former World Trade Center in New York City.¹⁶ PRR’s rail

¹² SLH Witness Victor Hand confirms that valuation maps were marked to show what was excluded from the conveyance to Conrail.

¹³ The 1975 Penn Central Track Chart was submitted with petitioners’ filing on May 24, 2006. Petitioners submitted the 1965 PRR Track Chart and the 1976, 1977 and 1980 Conrail Track Charts as Exhibit IX to their opening statement. Conrail witness Ryan indicates that mileposts were based on a convention followed originally by PRR that designated Pennsylvania Station in New York City as milepost 0.

¹⁴ Line Code 1421 was identified in the FSP as the 4.4-mile Passaic Branch, which connected with Line Code 1420 and extended to Kearny, NJ.

¹⁵ See Exhibit F to Conrail’s reply statement.

¹⁶ See Hudson & M. R. Co. Trustee Abandonment, 312 I.C.C. 487 (1961), and 312 I.C.C. 701 (1961). The Port Authority Trans-Hudson Corporation (PATH), a wholly owned subsidiary of The Port of New York Authority, subsequently took over the rail commuter service. Port Authority Trans-Hudson Corp. Acquisition and Op., 317 I.C.C. 357 (1962), and Pennsylvania R. Co.—Lease, 330 I.C.C. 503 (1966). PATH continues to operate commuter service between Newark and the former World Trade Center, along-side Conrail’s line between Waldo Avenue and Newark that Conrail operates as part of the New Jersey Shared Assets Area.

passenger commuter service between Newark and Exchange Place duplicated the service provided by H&M. Passengers using PRR's commuter service could transfer to H&M at Exchange Place and continue on H&M's line into New York City. The ICC authorized UNJRCC to abandon its line between Brunswick Street and Exchange Place and authorized PRR to discontinue its rail commuter service. United New Jersey R. & Canal Co. Abandonment, 312 I.C.C. 529 (1961) (UNJRCC Abandonment). PRR thus terminated its commuter service in 1961, razed its terminal at Exchange Place in 1963, and removed the UNJRCC main line between Grove Street and Exchange Place by the late 1960's, well before the creation of Conrail. The City subsequently acquired the elevated structure on this line and dismantled it.¹⁷

POSITIONS OF THE PARTIES

Petitioners. Petitioners assert that the Embankment is a line of railroad transferred to Conrail in the FSP under Line Code 1420. They point out that the deed transferring Line Code 1420 to Conrail specifically includes the Embankment property, describing it as a "line of railroad," and that the status of the Embankment as part of Line Code 1420 is reflected in Conrail's Track Charts from 1976, 1977 and 1980. They acknowledge that Conrail viewed the Embankment as ancillary spur track after acquiring the property, believing that therefore it need not obtain abandonment authority from the ICC or the Board, but contend, based on ICC and Board precedent, that Board or ICC abandonment authority nevertheless is required for the Embankment.¹⁸ Petitioners assert, however, that Conrail's contention that it intended to operate the Embankment as ancillary track is not relevant in determining whether abandonment authority was required for this trackage. They further point out that, as late as 1983, over 3,000 carloads per year for multiple customers moved over the Embankment. They thus claim that Conrail used the Embankment as a line of railroad, not merely as ancillary spur track.

Finally, petitioners explain that they do not intend to reactivate rail service over the Embankment. Rather, if abandonment is authorized, they would seek to acquire the Embankment for public use under 49 U.S.C. 10905, or under a similar New Jersey statute, N.J.S.A. 48:12-125.1, or eminent domain. Petitioners point out that, while the City initially viewed the Embankment as an eyesore and focused on private development opportunities or

¹⁷ See New Jersey City University, Jersey City Past and Present, Exchange Place, http://www.njcu.edu/programs/jchistory/Pages/E_pages/Exchange_Place.htm (last visited July 17, 2007); New York City Subway Resources, Path/Hudson & Manhattan RR, <http://www.nycsubway.org/nyc/path> (last visited July 17, 2007).

¹⁸ According to petitioners, even though the City encouraged Conrail to remove the unused and unmaintained bridges on the line as a safety measure, this did not affect the requirement that Conrail seek abandonment authority.

possible use as a freeway, it is now recognized that the Embankment has historic significance¹⁹ and that the property should be preserved or used as open space or as a trail.²⁰

Respondents. Respondents assert that “Line Code 1420” in the FSP and the deed conveying that property to Conrail do not refer to the line that includes the Embankment. Rather, respondents argue that USRA in the FSP and the deed conveying the property intended that Line Code 1420 constitute the old main line of the UNJRCC, which ran from the bulkheads on the Hudson River (milepost 1) to Harrison (milepost 7).

Respondents emphasize that Conrail treated the Embankment as ancillary spur track after the Embankment was transferred along with the UNJRCC main line described above. Respondents also note that the City had originally encouraged Conrail to make the Embankment available for redevelopment, and they argue that the Board should not permit its processes to be used to unwind the transaction Conrail has entered into with a developer. Respondents point out that there is no potential here to use the Embankment as an active rail line. They view the City’s claim that Board abandonment authority is required as a way to obtain leverage in a possible future condemnation action.

DISCUSSION AND CONCLUSIONS

The issue before us here is whether the Embankment was transferred to Conrail as a line of railroad included under Line Code 1420, in which case Board abandonment authority would be required, or whether the Embankment was only ancillary spur and yard track that can be abandoned under 49 U.S.C. 10906 without regulatory approval. Based on the record, as well as other publicly available information, we conclude that the Embankment was transferred to Conrail in the FSP as a line of railroad under Line Code 1420.

The record shows that a deed conveys a line of railroad identified as Line Code 1420. The description of Line Code 1420 in the FSP and the depiction of Line Code 1420 on Track Charts from 1975, 1976, 1977 and 1980 show Line Code 1420 as running from milepost 1 at the Hudson River to milepost 7 near Harrison. The only rail property existing in 1976 when Conrail was created that conformed to the descriptions in the deed, FSP, and the Track Charts is the trackage that includes the Embankment—the same trackage used by PRR and Penn Central and

¹⁹ See Verified Statement of Ron Emrich, petitioners’ Rebuttal Statement. The Embankment is listed on the New Jersey Register of Historic Places. See Exhibits E and I to the Petition for Declaratory Order.

²⁰ According to petitioners, the Embankment would be ideal for use as part of the East Coast Greenway, a proposed system of trails running from Maine to Florida. Petitioners state that they do not plan to seek a trail use condition under the National Trails System Act, 16 U.S.C. 1247(d), because Conrail would not agree to such a condition.

later by Conrail for carrying freight to shippers located on Hudson Street. Thus, the Embankment was transferred to Conrail as a line of railroad under Line Code 1420.

Respondents incorrectly claim that Line Code 1420 was intended instead to convey the UNJRCC main line that had run from the Hudson River to Newark. As previously noted, the UNJRCC main line had also been used for passenger service, and a portion of the passenger line between Grove Street and Exchange Place was abandoned by PRR in 1961 pursuant to authority granted by the ICC in UNJRCC Abandonment. Following the abandonment, the City acquired the elevated structure on the line and dismantled it. Thus, the portion of the UNJRCC main line that respondents claim is Line Code 1420 did not exist in 1976 when Conrail was created. Accordingly, Line Code 1420 in the FSP cannot refer to the UNJRCC main line. Moreover, the valuation maps dated 1975 show that the portion of the UNJRCC main line that ran along Railroad Avenue from Brunswick Street to Exchange Place was marked “sold,” indicating that that trackage segment was excluded from the rail property conveyed to Conrail in the FSP in 1976.

The 3R Act provides that, after the rail lines acquired by Conrail had been operated for 2 years, Conrail must seek abandonment authority from the ICC and subsequently the Board.²¹ The 3R Act obligates Conrail to obtain abandonment authority for the Embankment because the Embankment was conveyed to Conrail as a line of railroad under Line Code 1420.

Since 1976, Conrail has filed more than 1,100 abandonment proposals.²² Some of those proceedings have involved short segments of track that, like the Embankment, were no longer used for rail operations when abandonment authority was sought.²³ In none of those proceedings

²¹ See 45 U.S.C. 744(g), as amended by sections 205 and 327(3)(G) of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA). Section 205 of ICCTA appears as a note to 49 U.S.C. 701, which established the Board.

²² Many of Conrail’s applications were handled under streamlined procedures prescribed in the Northeast Rail Service Act of 1981, 45 U.S.C. 748 (NERSA), which applied until 1985. Now there are no special procedures for the abandonment of Conrail’s lines other than for the few lines that remain subject to the NERSA procedures due to Conrail’s having filed a Notice of Insufficient Revenues under NERSA for those lines.

²³ See, e.g., Consolidated Rail Corporation–Abandonment Exemption–in Philadelphia, PA, STB Docket No. AB-167 (Sub-No. 1183X) (STB served May 22, 1998) (0.42-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Erie County, NY, STB Docket No. AB-167 (Sub-No. 1178X) (STB served May 21, 1997) (0.59-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Madison County, IN, STB Docket No. 167 (Sub-No. 1173X) (STB served Dec. 5, 1996) (0.45-mile secondary track); Consolidated Rail Corporation–Abandonment Exemption–in Middlesex County, NJ, STB

(continued . . .)

has Conrail claimed that ICC or STB abandonment authority is not required because Conrail has treated what historically was part of a line of railroad as ancillary spur track.

This case is similar to a proceeding involving another Conrail line, the 1.45-mile West 30th Street Secondary Track known as the “Highline,” located in Manhattan. In that proceeding, the ICC determined that the Highline, which had been conveyed to Conrail under the FSP as Line Code 4235,²⁴ was subject to the agency’s abandonment regulation even though the track had many characteristics of a spur and had not been used by Conrail for many years. Chelsea Property Owners–Aban.–The Consol. R. Corp., 8 I.C.C.2d 773, 790-91 (1992), aff’d sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

Moreover, Conrail’s position that the Embankment is merely ancillary track ignores the fact that the Embankment was operated for over 100 years as part of PRR’s major freight route connecting with the piers at Harsimus Cove Yard. As the record here shows, Penn Central continued to operate over the Embankment after the marine operations at Harsimus Cove Yard relocated. After acquiring the line, Conrail operated over the Embankment to move substantial amounts of traffic to serve shippers located on Hudson Street. Thus, this track was not used as ancillary track. In any event, even though Conrail may have viewed the Embankment as only ancillary yard or spur track, Conrail’s actions alone could not remove the need for it to obtain appropriate Federal abandonment authority for this property. See The Atchison, Topeka and Santa Fe Railway Company–Abandonment Exemption–In Lyon County, KS, Docket No. AB-52 (Sub-No. 71X), slip op. at 5 (ICC served June 17, 1991) (“Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur . . . solely through the railroad’s unilateral decision to change its use of the track segment over time.”).

In sum, we conclude that Conrail acquired the Embankment as a line of railroad under Line Code 1420 of the FSP. Thus, the Embankment is a line of railroad subject to Federal

(. . . continued)

Docket No. AB-167 (Sub-No. 1172X) (STB served Dec. 19, 1996) (1.08-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Marion County, IN, STB Docket No. AB-167 (Sub-No. 1167X) (STB served Sept.17, 1996) (1.55-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–Between Chesterbrook and Cedar Hollow, in Chester County, PA, Docket No. AB-167 (Sub-No. 1118X) (ICC served Aug. 10, 1993 (0.85-mile line); Consolidated Rail Corporation–Abandonment Exemption–in Elizabeth, Union County, NJ, Docket No. AB-167 (Sub-No. 1113X) (ICC served Dec. 8, 1993 (0.18-mile industrial track); Consolidated Rail Corporation–Abandonment Exemption–in Baltimore City, MD, Docket No. AB-167 (Sub-No. 1108X) (ICC served Dec. 3, 1992 (1.24-mile branch line); and Consolidated Rail Corporation–Abandonment Exemption–in Union County, NJ, Docket No. AB-167 (Sub-No. 1096X) (ICC served Nov. 20, 1989) (0.21-mile line).

²⁴ See Exhibit A to SLH’s reply.

abandonment regulation. Accordingly, the Embankment property sold to SLH remains part of the national rail system subject to the Board's exclusive jurisdiction until appropriate abandonment authority is obtained.

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

It is ordered:

1. Petitioners' motion for leave to file a Penn Central Track Chart is granted, and the supplemental filings are accepted into the record as set forth in this decision.
2. The petition for declaratory order is granted; this proceeding is discontinued.
3. This decision is effective on September 8, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary