

NEW JERSEY SENATE

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Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

215749

Re: Jersey City -- Petition for a Declaratory Order, STB Finance Docket 34818

Dear Secretary Williams:

I represent Legislative District 33 in the New Jersey Senate, where I also serve as Majority Leader. I am writing to support the Petitioners, City of Jersey City, *et al.*, in their petition for a declaratory order regarding the Harsimus Branch of the old Pennsylvania Railroad in Jersey City. The Harsimus Branch and its land marked Embankment are in my district.

The Consolidated Railroad Corporation (Conrail) appears to be illegally abandoning the Harsimus Branch. The Harsimus Branch historically served as a major line of railroad for line-haul operations, carrying freight from the Midwest and Mid-Atlantic States to New York City and its harbors. Under both the Interstate Commerce Act and the ICC Termination Act (49 U.S.C. 10903), a railroad such as Conrail must obtain abandonment authority from the federal rail regulatory agency --now the Surface Transportation Board -- before abandoning such a line. There is no record that Conrail obtained abandonment authority for the Harsimus Branch. What is known is Conrail has purported to sell a major portion of it to a local developer for non-rail purposes.

Conrail may not lawfully abandon and sell-off the Branch without obtaining prior authority from your Board. Even if the Harsimus Branch met this Board's requirements for abandonment authority, the ICC Termination Act and other federal statutes provide a number of remedies to foster the public interest upon rail abandonment. These remedies include "public use conditions" under 49 U.S.C. 10905, historic preservation conditions under 16 U.S.C. 470f and applicable STB regulations, environmental conditions under various statutes, possible mandatory sales for continued rail use under 49 U.S.C. 10904, and possible rail-banking under 16 U.S.C. 1247(d). In addition, New Jersey has important remedies available at state law once an abandonment has been authorized by the federal regulatory agency. Conrail's failure to comply with 49 U.S.C. 10903 deprives the public of the protections afforded by all these otherwise available remedies.

These considerations are certainly germane in the case of the Harsimus Branch. That Branch contains the Sixth Street Embankment, which is listed on the State Register of Historic Places and is eligible for the National Register of Historic Places. Jersey City wishes to acquire the right of way intact for possible continued rail use (including particularly as a light rail route) and in any event for open space, park, historic preservation and trail purposes. Neighborhood groups, green way interests, and trail organizations also support preservation of the right of way.

The situation is similar to Conrail's "High line" right of way across the Hudson River in Manhattan. In that case, Conrail not only acknowledged but also argued that the right of way was a line of railroad subject to federal abandonment jurisdiction. This Board's predecessor agreed, explaining that the "issue of the public convenience and necessity may be addressed by exercising our §§10903 jurisdiction," not by unlawfully ignoring it. [ICC Conrail decision served Sept. 16, 1992, in AB 167 (Sub-no. 1094).]

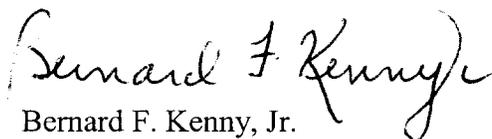
Beyond its listing on the State Register of Historic Places, the state has additional interest in this property, as follows:

- The Harsimus line has been the subject of study for transportation use, including light rail.
- The Embankment is a NY/NJ Harbor Estuary Program Priority Acquisition Site.
- The New Jersey Department of Transportation funded a 2003 study that recommended this corridor be part of the East Coast Green way, a walking and bicycling trail from Maine to Florida. All New Jersey counties and municipalities along the recommended route have endorsed it. The Embankment is considered the "Gateway from New York to New Jersey" for the Green way.
- In 2004 and 2005, State Green Acres grants were awarded to the City of Jersey City to acquire his property from Conrail.

This Board should assert its jurisdiction to prevent an unlawful abandonment in a major urban area, and to allow Jersey City and other interested parties to invoke otherwise applicable federal and state remedies. I hope that the Board will take appropriate and expeditious action to prevent this unlawful abandonment.

Please include my letter in the record of proceeding. I have sent copies to representatives of the parties by U.S. mail (see CC list below).

Sincerely,



Bernard F. Kenny, Jr.

Cc: Jonathan Broder, VP and GC
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