

STATEMENT OF YVONNE KRYWYJ  
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STB Finance Docket No. 34425  
CITY OF LINCOLN—PETITION FOR DECLARATORY ORDER

Good morning, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

The city of Lincoln, NE, to which I will refer as the city, filed a petition for a declaratory order requesting that the Board determine that the city's acquisition of a 20-foot-wide strip of right-of-way of Lincoln Lumber Company's rail line would not constitute an acquisition, abandonment, or discontinuance of operations for which prior Board approval would be required. The city also seeks a determination that its acquisition of such a strip of Lincoln Lumber's right-of-way under state eminent domain law would not be federally preempted under 49 U.S.C. 10501(b). Lincoln Lumber, to which I will refer as the railroad, maintains that it needs the full width of its right-of-way for railroad operations. The draft decision before you would grant the petition to resolve the parties' dispute and would find that the city's proposed taking of a 20-foot-wide strip of the railroad's right-of-way under state eminent domain law is federally preempted.

The draft decision finds that, under 49 U.S.C. 10501(b), the jurisdiction of the Board over transportation by rail carriers and the remedies provided are exclusive and preempt other remedies provided under Federal or state law. This preemption is broad enough to preclude all state and local regulation that would prevent or unreasonably interfere with railroad operations, including condemnation.

In this case, the railroad states that it uses its entire right-of-way for rail operations and uses the disputed parcel for moving freight, storing lumber, unloading railroad cars, and staging unloaded freight for further movement. The railroad has also indicated that it intends to continue and possibly expand such operations and that a trail would interfere with or prevent these activities, all of which are part of "transportation" by rail as defined at 49 U.S.C. 10102, subsection 9.

The burden is on the city to justify its request to allow a taking of actively used railroad property. The draft decision finds that the city has not adequately refuted the railroad's contentions that it uses all of its right-of-way, including the northernmost 20 feet, for rail transportation purposes, and that the narrowing of the right-of-way to construct a trail would hinder or halt those legitimate transportation operations. The city has not proffered convincing evidence that the railroad can satisfy its present and future rail transportation needs using less than the full width of its right-of-way. Because the city has not made such a showing, the draft decision would find that the Board is not in a position to declare that the proposed taking will not unduly interfere with interstate commerce.

That concludes my statement. If you have any questions, we will be happy to answer them.