

SERVICE DATE – APRIL 10, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36710

RICHMOND WATERFRONT INDUSTRIAL PARK, LLC—
PETITION FOR DECLARATORY ORDER

Digest:¹ The Board denies a petition for declaratory order seeking a determination that track on certain property owned by Richmond Waterfront Industrial Park, LLC, has never been subject to the Board’s jurisdiction. Instead, the Board finds that the track has been used as excepted track subject to the Board’s jurisdiction under 49 U.S.C. § 10906. The Board declines to determine whether such track has been abandoned.

Decided: April 10, 2026

On July 28, 2023, Richmond Waterfront Industrial Park, LLC (RWIP), petitioned the Board for a declaratory order determining that track owned by the Philadelphia Belt Line Railroad Company (PBL) that bisects RWIP’s property in Philadelphia, Pa. (the Track), is not, and has never been, subject to the Board’s jurisdiction.² RWIP states that it filed a quiet title action in the Court of Common Pleas in Philadelphia regarding the track at issue. (Pet. 2.) According to RWIP, the court held that it did not have subject matter jurisdiction to determine if the track was abandoned and instructed RWIP to bring the matter to the Board. (*Id.* at 2-3.) RWIP then appealed the lower court’s decision to the Superior Court of Pennsylvania and applied to stay the appeal so it could request that the Board issue a declaratory order concerning the jurisdictional status of the Track. (*Id.* at 4.) RWIP’s application for a stay was denied, (*see* PBL Letter 1, 3, Sept. 14, 2023), and on March 25, 2024, the Superior Court of Pennsylvania affirmed the Court of Common Pleas’ decision, (*see* RWIP Suppl. 2, Apr. 9, 2024; *id.*, Attach. 1). RWIP reports that it has filed with the Supreme Court of Pennsylvania, Eastern District, a petition for allowance of appeal of the Superior Court’s decision. (RWIP Letter 1, Apr. 29, 2024.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² RWIP suggests that PBL has an easement on the land underlying the Track. (RWIP Opening 10.) PBL states that it believes that it owns some or all the property in fee simple. (PBL Reply 2 n.5, 24 n.38.) However, both parties correctly acknowledge that the nature of PBL’s interest in the land underlying the Track is irrelevant to the Board’s determination regarding the jurisdictional status of the Track. (PBL Reply 2 n.5; RWIP Rebuttal 2-3 n.2.)

On May 9, 2024, the Board served a decision setting a procedural schedule for this proceeding. The Board explained that although it does not typically provide for discovery in declaratory order proceedings, it would allow discovery here because both parties requested it and additional facts could assist the Board in its determination. Richmond Waterfront Indus. Park, LLC—Pet. for Declaratory Ord., FD 36710, slip op at. 2 (STB served May 9, 2024). Following discovery, the procedural schedule allowed for an opening statement by RWIP, a reply statement by PBL, and a rebuttal statement by RWIP.

For the reasons explained below, the Board denies RWIP’s petition and finds that the Track has been used as excepted track under 49 U.S.C. § 10906.³ Because the parties have not fully briefed the issue of whether the Track has been abandoned, the Board declines to address that issue, without prejudice to the filing of a petition for declaratory order on that question.

BACKGROUND

RWIP, an industrial leasing company, owns land in Philadelphia along the Delaware River which it wants to develop for industrial and commercial use. (RWIP Opening 5-6.) RWIP states that in 1998, it purchased the land on which the Track is located from Rohm and Haas (R&H), a chemical manufacturer that operated facilities north of that property. (*Id.* at 5.) The Track is part of PBL’s Belt Line North (BLN) on the Belt Line,⁴ which is approximately 3 miles long. (RWIP Pet. 10); Conrail, FD 32802, slip op. at 2. The Track is approximately 2,719 feet long, (RWIP Pet., V.S. David Wolf 2), and is the northernmost part of the BLN, running from Buckius Street in the south to Bridge Street in the north, where it is stub-ended. (See RWIP Pet. Ex. 7-8, Ex. C; PBL Reply 19.)

PBL was formed in 1889 to “construct and operate a terminal railroad in the Port of Philadelphia and to maintain competitive rail services in the port and adjacent areas.”⁵ (RWIP Pet. 5 (quoting Conrail, FD 32802, slip op. at 1).) RWIP states that an 1890 Ordinance authorizing construction of the Belt Line (1890 Ordinance),⁶ required PBL to operate in accordance with what has been called the “Belt Line Principle,” which it claims “‘mandate[s] equal, non-discriminatory access over the PBL line to all rail carriers’ to advance commerce in Philadelphia” (RWIP Opening 7 (quoting Conrail, FD 32802, slip op. at 1).) According to

³ Spur, industrial, team, switching and side tracks are referred to collectively as “excepted” tracks. Construction, acquisition, operation, abandonment, and discontinuance of excepted tracks are within the Board’s exclusive jurisdiction, 49 U.S.C. § 10501(b)(2), but do not require Board authority, 49 U.S.C. § 10906. See also Tri-City R.R.—Pet. for Declaratory Ord., FD 36037, slip op. at 4 (STB served June 1, 2017).

⁴ The Belt Line includes the Belt Line South (BLS), which is not connected to the BLN. Phila. Belt Line R.R. v. Consol. Rail Corp. (Conrail), FD 32802, slip op. at 2 (ICC served July 2, 1996.) The BLN connects with tracks operated by Conrail predecessors. (Pet. 8.)

⁵ RWIP states that PBL is a “quasi-public corporation”, with the majority of its stock held by what is now the Greater Philadelphia Chamber of Commerce. (RWIP Opening 8.)

⁶ A copy of the 1890 Ordinance is provided as Exhibit 1 of RWIP’s opening statement.

RWIP, shippers on the BLN originally received service from the Philadelphia and Reading Railroad Company (Reading), which had contractual rights to operate the Track from its construction in 1891 until 1976. (*Id.* at 13.) RWIP explains that in 1976, Conrail assumed Reading's rights and obligations with respect to the tracks owned by PBL but did not seek authority to operate over the BLN or the Track from the Board's predecessor, the Interstate Commerce Commission (ICC). (*Id.* at 13-15.) In addition, RWIP states that between January 1967 and October 1977, PBL entered into a series of leases with R&H by which the Track was progressively leased in segments to R&H to allow it to move its own rail cars. (RWIP Opening 13.) According to RWIP, from 1967 until use of the Track ceased in 2001, the primary user of the Track was R&H in conjunction with its own plant operations. (*Id.* at 16-17.)

Positions of the Parties. RWIP states that the history of the BLN and the Track demonstrates that the Track is not, and has never been, a line of railroad subject to the Board's jurisdiction. (Pet. 17.) Rather, RWIP argues that because the Track was not built or paid for by PBL and was operated by other carriers pursuant to private contracts,⁷ the Track is private track.⁸ (RWIP Opening 21-22; RWIP Rebuttal 7.) According to RWIP, this conclusion is supported by the facts that the Track was constructed on R&H's property, R&H was the only shipper north of Buckius Street, and R&H used its own locomotives and employees to move tank cars to and from Conrail. (Pet. 18-19.) According to RWIP, the fact that Reading may have provided switching service over the Track pursuant to contracts before it was leased to R&H did not make the Track subject to the Board's jurisdiction. (RWIP Rebuttal 7; *see also* Pet. 21-22.) In addition, RWIP claims that the Belt Line Principle is inconsistent with use of the Track for common carrier operations. (RWIP Pet. 25-27.)

RWIP further argues that precedent involving PBL has consistently found a lack of federal jurisdiction over PBL's operations and rights-of-way. (RWIP Rebuttal 4 (citing Phila. Belt Line R.R.—Pet. for Declaratory Ord., FD 35345 (STB served August 4, 2010); Conrail, FD 32802).) In addition, RWIP states that in Philadelphia Belt Line Railroad—Operation in Philadelphia, Pa.—Exemption Under 49 U.S.C. § 10505 from 49 U.S.C. § 10901 (PBL Exemption), FD 29517 (ICC served Apr. 10, 1981), the ICC found that because PBL did not construct or operate the BLN, the “grandfathering” provisions of the Interstate Commerce Act of

⁷ RWIP provided a contract between PBL and Reading as Exhibit 3 of its opening statement. It designated that exhibit as confidential and redacted it in its entirety in the public version of its opening statement. However, that same agreement was attached as Exhibit F of PBL's reply and no part of it was designated as confidential by PBL. RWIP did not object to PBL's decision not to designate the agreement as confidential. That agreement is therefore part of the public record in this case.

⁸ Private track, which is outside the Board's jurisdiction, is typically owned, built, and maintained by a shipper (or for a shipper at the shipper's expense) and operated by the shipper (or its contractor) to serve that shipper, moving the shipper's own goods, so that there is no holding out to serve other shippers for compensation. *See, e.g., B. Willis, C.P.A., Inc.—Pet. for Declaratory Ord.*, FD 34013, slip op. at 2 (STB served Oct. 3, 2001); V&S Ry.—Pet. for Declaratory Ord.—Rail Operations in Hutchinson, Kan., FD 35459, slip op. at 8 (STB served July 12, 2012).

1920 did not apply to PBL.⁹ (RWIP Opening 23-24.) RWIP states that, in that proceeding, the ICC granted operating authority to PBL, but PBL never consummated that authority. (*Id.* at 24.) Instead, according to RWIP, PBL allowed Conrail to use the BLN pursuant to private agreements, which both parties agreed did not require Board approval. (*Id.*) According to RWIP, in PBL Exemption the ICC denied PBL's claim that its tracks possessed latent common carrier status, and PBL stated that the rail carriers that had operated over its track in the past had done so pursuant to private contracts outside the agency's jurisdiction. (*Id.* at 21-22.)

RWIP also argues that the Track is not excepted track under § 10906. (RWIP Pet. 20-21.) RWIP claims that the Track was more likely to have been constructed to be used as private track for the exclusive use of R&H than constructed pursuant to the 1890 Ordinance to be part of PBL's system. (*Id.* at 20.) RWIP further argues that the Track cannot be considered excepted track because it does not connect to any common carrier track owned by PBL and has never been used to provide common carrier service. (*Id.* at 20-21.)

PBL claims that both RWIP and the Board have acknowledged that PBL is a class III rail carrier. (PBL Reply 5.) According to PBL, because it is a common carrier subject to the Board's jurisdiction, any track that it owns cannot be private track. (*Id.* at 9.) In addition, PBL argues that whether it constructed, paid for, or operated over the Track is not determinative of whether it is subject to the Board's jurisdiction. (*Id.* at 7-9.) Similarly, PBL states that its failure to consummate authority granted to it in PBL Exemption does not establish that the Track is outside the Board's jurisdiction. (*Id.* at 12-13.) Rather, PBL claims that because the Track was built with PBL funds, under the direction of PBL, controlled by PBL, and used by other rail carriers to provide common carrier service, it is subject to the Board's jurisdiction. (*Id.* at 12.)

PBL further argues that its agreements with respect to the Track do not demonstrate that the Track is outside the Board's jurisdiction. (*Id.* at 14-15.) According to PBL, the fact that the Track was operated pursuant to haulage contracts for which no Board authority was sought is not determinative of whether PBL has a residual common carrier agreement or whether the tracks were used for common carrier service. (*Id.* at 14.) In addition, PBL claims that the fact that these agreements were subject to the Belt Line Principle is not inconsistent with use of the track by other carriers for common carrier service. (*Id.* at 15.) PBL further claims that Conrail's decision not to seek Board authority for its lease of the BLN is not inconsistent with the Track being subject to the Board's jurisdiction. (*Id.*)

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory

⁹ The precursor to 49 U.S.C. § 10901 requiring ICC/Board operating authority was enacted in the Transportation Act of 1920, but existing carriers had legacy status such that they did not have to seek ICC authority to continue their operations. Burlington N. & Santa Fe Ry.—Pet. for Declaration or Prescription of Trackage Crossing, Trackage, or Joint Use Rts., FD 33740, slip op. at 7 (STB served May 13, 2003).

Ord. Proc., 5 I.C.C.2d 675 (1989). The Board instituted this proceeding to resolve whether the Track is subject to the Board's jurisdiction. As explained further below, the Board finds that the Track was subject to the Board's jurisdiction as excepted track under 49 U.S.C. § 10906. This means that, if the Track has been abandoned, it is no longer subject to the Board's jurisdiction. Pinelawn Cemetery—Pet. for Declaratory Ord., FD 35468, slip op. at 11 (STB served Apr. 21, 2015) (finding that excepted track remains subject to the Board's jurisdiction until it is abandoned). Because, however, the parties have not fully briefed the issue of whether the Track has been abandoned, the Board will not determine abandonment in this decision.

Private vs. Jurisdictional Track. RWIP acknowledges that Reading used the Track to provide rail service.¹⁰ (RWIP Rebuttal 8, 12.) If Reading's service was common carriage, the Track was subject to the Board's jurisdiction.¹¹ On the other hand, if the Track was operated exclusively as private track, it was never subject to the Board's jurisdiction. As noted above, private track is outside the Board's jurisdiction and is typically owned, built, and maintained by a shipper (or for a shipper at the shipper's expense) and operated by the shipper (or its contractor) to serve that shipper, moving the shipper's own goods, so that there is no holding out to serve other shippers for compensation. See, e.g., B. Willis, C.P.A., Inc.—Pet. for Declaratory Ord., FD 34013, slip op. at 2 (STB served Oct. 3, 2001); V&S Ry.—Pet. for Declaratory Ord.—Rail Operations in Hutchinson, Kan., FD 35459, slip op. at 8 (STB served July 12, 2012). Here, the available evidence indicates that Reading did not conduct private operations.

First, the Track was owned by a quasi-public non-shipper (PBL) and maintained by a carrier (Reading), which is inconsistent with a classification as private track. See Pinelawn Cemetery, FD 35468, slip op. at 8 (stating that the track at issue "must be considered excepted track and cannot be considered private track because it is not owned or maintained by any shipper" (internal quotation marks omitted)). As RWIP itself explains, PBL owned the Track and its construction was financed by Reading. (RWIP Opening 11, 23; see also id. at Ex. 2 at 2, Ex. 3 at 2). In addition, pursuant to the agreement between Reading and PBL, Reading was also responsible for maintaining the Track. (RWIP Opening 12-13, Ex. 3 at 3.) Thus, the Track was not built, owned, or maintained by a shipper as is typical for private track.¹²

¹⁰ RWIP also states that Conrail may have used the track, although it believes that is unlikely. (RWIP Rebuttal 5.)

¹¹ See United States v. Balt. & Ohio R.R., 333 U.S. 169, 176 (1948) (stating that track used by a common carrier is within the Board's jurisdiction even if the track is owned by a noncarrier and operated pursuant to a contract); JGB Props. LLC—Pet. for Declaratory Ord., FD 35817, slip op. at 7-8 n.10 (STB served Dec. 10, 2015) (track built and owned by a non-carrier developer of an industrial park was subject to the Board's jurisdiction because it was not used exclusively to move the goods of the owner of the track but used by a rail carrier to serve shippers in the industrial park); 49 U.S.C. § 10102(9)(A) (defining "transportation" as including property related to the movement of passengers/property by rail "regardless of ownership or an agreement concerning use").

¹² RWIP claims that the Track was not funded or built by PBL. However, RWIP fails to explain how these claims are related to the jurisdictional status of the Track. There is no requirement that the owner of track itself fund or build track for the track to be subject to the

Second, the Track was operated by Reading pursuant to a contract between it and PBL, rather than operated by a shipper or its contractor, as is also generally the case with private track. To that point, the 1890 Ordinance required that the BLN be “open to the use of all railroad companies” and required PBL to build any “sidings, turnouts, or connections” requested by businesses along PBL’s line so that they would “have the full benefit of receiving from and delivering property to [PBL’s line].” (RWIP Opening Ex. 1 at 1, 6.) These provisions indicate that PBL’s track was not intended to be used solely by a shipper for that shipper’s operations but to be available to all rail carriers to provide service to any shippers in the area.¹³ Absent evidence to the contrary, the Board sees no reason to conclude that Reading was using the Track for private operations while it was using the rest of the BLN to serve multiple shippers.¹⁴

RWIP presents several arguments as to why, despite the evidence described above, the Board should conclude that the Track has only been used for private operations and is outside the Board’s jurisdiction. For the reasons explained below, these arguments are unconvincing.

As noted above, RWIP does not dispute that Reading operated over the Track. However, in its petition, RWIP claims that there are “legitimate questions about whether the [Track was] even constructed under authority of the 1890 Ordinance, but instead [was] a private industry track to connect PBL’s tracks to [R&H’s] facility.” (RWIP Pet. 18.) RWIP appears to have abandoned this claim in its rebuttal. (RWIP Rebuttal 8 (stating that “the [Track] was constructed pursuant to the 1890 Ordinance”).) In any event, the Track could not have been built as private track to serve R&H’s facility because R&H’s facility did not exist until 1920¹⁵ and RWIP

Board’s jurisdiction, where that track otherwise has the characteristics of jurisdictional track. See, e.g., JGB Props. LLC—Pet. for Declaratory Ord., FD 35817, slip op. at 8 n.11 (STB served Dec. 10, 2015); N.Y. City Econ. Dev. Corp.—Pet. for Declaratory Ord., FD 34429, slip op. at 7 (STB served July 15, 2004).

¹³ In Conrail, the ICC stated that PBL had made the Belt Line available to “three major railroads and their successors that have provided Philadelphia shippers with competitive line haul service.” Conrail, FD 32802, slip op., at 3. The ICC went on to explain that “[BLN] shippers originally received service from [Reading] . . . via Reading’s Port Richmond Yard and Richmond Branch.” Id. In addition, the ICC stated that the BLN was currently being used by Conrail, Reading’s successor, to serve 10 shippers and transport approximately 2,894 carloads annually. Id.

¹⁴ RWIP provides evidence that Conrail may have never operated over the Track and that after 1967 it may have been used only by R&H to conduct its own operations. The Board need not determine here what type of operations, if any, Conrail and R&H conducted over the Track since the Board has determined that the Track became subject to the Board’s jurisdiction as a result of Readings operations, which pre-date Conrail’s and R&H’s.

¹⁵ Env’t Protection Agency, Documentation of Env’t Indicator Determination 2 (Feb. 5, 1999) (“Rohm and Haas began its chemical processing operations at [its Philadelphia plant] in 1920.”), https://19january2021snapshot.epa.gov/sites/static/files/2016-01/documents/hh_pad077883346.pdf; Nat’l Tech. Info. Serv., Field Survey of Rahm and Haas Co. 1 (May 1, 1972) (“An original plant has been on this site since 1820, but this location was

acknowledges that the Track was built prior to 1920. (RWIP Opening 13, 22.) In addition, a map dated 1918 provided as part of Exhibit A to PBL's Reply shows that the BLN at that time included the portion north of Buckius Street (i.e., the portion of the BLN constituting the Track).

RWIP further claims that because Reading operated over the Track pursuant to a private contract, its operations were private operations outside the ICC's jurisdiction.¹⁶ (RWIP Rebuttal 7.) The contract that RWIP refers to, however, is between PBL and Reading and grants Reading "the right to the use, enjoyment and occupancy" of PBL's tracks; it is not a contract between a carrier and a shipper to provide service exclusively to that shipper as would be the case with a contract for service over private track.¹⁷ Moreover, there are many situations where carriers enter into contracts to operate over tracks owned by another party where those tracks are subject to the Board's jurisdiction.¹⁸

RWIP also argues that the fact that the Belt Line Principle applies to all operations over PBL's tracks demonstrates that those tracks are not subject to the Board's jurisdiction. (RWIP Opening 25-26.) According to RWIP, the Belt Line Principle "obligates interstate rail carriers to place the commercial interests of Philadelphia businesses over the needs of the carrier's other customers" and is therefore inconsistent with the common carrier obligation that applies to all rail carriers subject to the Board's jurisdiction. (*Id.* at 25.) In support of this claim, RWIP cites to language in a 2015 lease between PBL and Conrail stating that the Belt Line Principle requires "that the Belt Line be operated [] to benefit the trade and commerce of the City of Philadelphia." (*Id.*) However, such a requirement is not found in the 1890 Ordinance establishing the Belt Line Principle or in the agreement between PBL and Reading. Thus, there is no indication that it would have applied to Reading's operations over the Line. Even if it did, and even if it could be read so broadly as to conflict with the common carrier obligation, it would still not be relevant to the jurisdictional analysis. Whether a particular track is subject to Board jurisdiction is

not acquired by Rohm and Haas until 1920."),
https://stacks.cdc.gov/view/cdc/233742/cdc_233742_DS1.pdf.

¹⁶ RWIP argues that PBL never operated as a common carrier and therefore did not engage in activities that would support a finding that the Track is subject to Board jurisdiction. (RWIP Opening 10.) The Board will not address whether PBL is or has ever been a common carrier because the Board's determination here is not dependent on PBL's status. Rather, it is based on Reading's operations over the Track.

¹⁷ PBL states, and RWIP does not dispute, that it has never used the Track to ship its own goods. (PBL Reply 18.)

¹⁸ See, e.g., Union Pac. R.R.—Operation Exemption—in Yolo Cnty., Cal., FD 34252, slip op. at 4 (STB served Dec. 5, 2002) (track owned by a port over which a carrier was conducting switching operations pursuant to a contract with a port held to be excepted track subject to the Board's jurisdiction); N.J. Transit—Acquis. Exemption—Norfolk S. Ry. in the Cntys. of Morris and Warren N.J., FD 36676, slip op. at 2 (STB served July 27, 2023) (discussing agreements to allow freight carriers to provide common carrier service over rail line owned by New Jersey Transit); Atl. Ry.—Change in Operator Exemption—Foxville & N. R.R., FD 36373, slip op. at 1 (STB served Apr. 10, 2020) (stating that Atlantic Railways filed a notice of exemption to allow it to lease and operate a rail line owned by a subsidiary of Alcoa, Inc.).

determined by the nature of the operations conducted on the track, not by the degree or manner of attempted regulation of those operations by state or local governments. And to the extent state and local governments pass laws that interfere with common carrier service, those laws are preempted. See, e.g., Friberg v. Kan. City S. Ry., 267 F.3d 439, 443 (5th Cir. 2001) (finding state statute restricting a train from blocking an intersection was preempted); CSX Transp., Inc.—Pet. for Declaratory Ord., FD 34662, slip op at 1-2 (finding a local law prohibiting transportation of certain hazardous materials in particular parts of a city was preempted). Such attempted regulation does not affect the jurisdictional status of the track or service involved.

RWIP further argues that the failure of Reading and Conrail to seek authority to operate or discontinue operations over the Track, indicates that it is outside the Board's jurisdiction. (RWIP Opening 22, 24; RWIP Rebuttal 8.) However, as explained below, the Board has concluded that the Track has been excepted track under 49 U.S.C. § 10906. No Board authority is required to operate over or discontinue operations over excepted track. See 49 U.S.C. § 10906 ("The Board does not have authority . . . over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.")¹⁹

The Board disagrees with the conclusions that RWIP draws from various findings and statements in prior Board and ICC proceedings. According to RWIP, in Philadelphia Belt Line Railroad, and Conrail, PBL's operations and rights of way were determined not to be subject to agency jurisdiction. (RWIP Rebuttal 4.) However, neither case involved a finding regarding the jurisdictional status of the Track or the BLN more broadly. In addition, the Board's holding in the present case that the Track was subject to its jurisdiction does not rely on a finding that PBL conducted rail operations of any kind.²⁰ Accordingly, these cases are inapposite.

¹⁹ In addition, as explained above, when the precursor to 49 U.S.C. § 10901 requiring ICC/Board operating authority was enacted in the Transportation Act of 1920, existing carriers, such as Reading, were grandfathered such that they did not have to seek ICC authority to continue their operations. Burlington N. & Santa Fe Ry.—Pet. for Declaration or Prescription of Trackage Crossing, Trackage, or Joint Use Rts., FD 33740, slip op. at 7 (STB served May 13, 2003). Thus, Reading would not have needed to seek operating authority from the ICC to conduct common carrier operations over the Track even if it were § 10901 track.

²⁰ Neither of these cases held that any track owned by PBL was outside the ICC's or the Board's jurisdiction. In Philadelphia Belt Line Railroad, the Board found that although the City of Philadelphia had granted PBL the right to operate over a certain right-of-way, that right-of-way was not subject to Board jurisdiction because no track had ever been constructed on it. Phila. Belt Line R.R., FD 35345, slip op. at 4. In addition, the Board declined to reach the issue of whether PBL's alleged operations over an existing line were subject to Board jurisdiction because PBL did not explain how such operations were relevant to the issue pending before the Board. Id. at 5. In Conrail, PBL asked the ICC to grant it terminal trackage rights over the lines of other rail carriers that connected PBL's Belt Line South to its BLN. Conrail, FD 32802, slip op. at 1. The ICC found that because PBL had never operated the Belt Line, it could not demonstrate that granting it terminal trackage rights was necessary to remedy any harm. Id. at 7.

In addition, RWIP relies heavily on PBL Exemption. Specifically, RWIP claims that in PBL Exemption, the ICC confirmed that neither Reading's nor Conrail's operations over the Track were common carrier operations. (RWIP Opening 15.) However, that case contains no such finding. The case does not even discuss Reading's operations other than to say that Conrail obtained the right to operate over PBL's tracks from Reading. PBL Exemption, FD 29517, slip op. at 1.

RWIP also claims that in PBL Exemption, the ICC found that the grandfathering provisions of the 1920 Transportation Act did not apply to PBL's tracks and rejected PBL's claim that the Track possessed latent jurisdictional status. (RWIP Opening 23-24; RWIP Rebuttal 4-5.) However, the ICC made no such findings. Rather, it found that because PBL had never operated as a rail carrier, its *operations* were not covered by the grandfathering provisions and that PBL therefore required authorization to begin operations. Id. at 2. Similarly, the ICC did not reject a claim by PBL that its tracks possessed latent or dormant jurisdictional status but rather rejected PBL's claim that its right to operate as a common carrier laid dormant since construction of the track. See PBL, Supplemental Petition, Mar. 23, 1982, Phila., Pa.—Exemption under 49 U.S.C. § 10505 from 49 U.S.C. § 10901, FD 29517 (arguing that PBL did not require new operating authority because it possessed dormant operating authority dating back to the nineteenth century). Whether PBL conducted common carrier operations or had dormant operating rights would not alter the Board's determination in this decision. As explained above, the determination that the Track was subject to the agency's jurisdiction is based on Reading's operations over the Track.

49 U.S.C. § 10901 vs. § 10906 Track. Excepted tracks are within the Board's exclusive jurisdiction, but Board authority is not required to construct or operate over them or to abandon or discontinue service over them. See 49 U.S.C. § 10501(b)(2); see also, e.g., Tri-City R.R.—Pet. for Declaratory Ord., FD 36037, slip op. at 4 (STB served June 1, 2017). In determining whether a particular track is subject to the Board's licensing authority under 49 U.S.C. § 10901 or is excepted track under § 10906, the Board has adopted a case-by-case approach that examines factors such as relationship to the rail system, physical characteristics, intended use, and history. See N.Y.C. Econ. Dev. Corp.—Pet. for Declaratory Ord., FD 36467, slip op. at 3 (STB served June 11, 2021).

Depending on the facts of the case, the Board's analysis of whether track is a railroad line under § 10901 or excepted track under § 10906 is informed by various indicia of the factors noted above. With respect to the track's relationship to the rail system, the Board typically has considered whether the track was built to penetrate new markets or territory. Id. With respect to physical characteristics, the Board has considered the length of the track, whether it is stub-ended, and the weight of the rail. Id. And with respect to intended use, the Board has considered whether the track will be used for certain ancillary operations (e.g., switching, loading, and unloading), whether it serves more than one shipper, whether the shipper is located at the end of the track, whether there are stations on the track, whether there is regularly scheduled service over it, who owns and maintains it, and the volume of traffic moving over it. Id. at 4. The Board considers and weighs the various indicia as appropriate in light of the particular evidence and circumstances of each case. Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., FD 32760, slip op. at 15 (STB served Jan. 31, 2018) ("In determining whether a track is spur

track, the Board uses a “case-by-case approach” and “weighs the various indicia as appropriate in light of the particular history and circumstances of each case.”); cf. Norfolk S. Ry.—Pet. for Exemption—in Balt. City & Balt. Cnty., Md., AB 290 (Sub-No. 311X), slip op. at 10 (STB served Jan. 27, 2012) (discussing the Board’s discretion in weighing evidence submitted by the parties). Given the typical interconnection among the track’s relationship to the rail system, its physical characteristics, and its intended use, the various indicia of those factors generally relate to one another, and evidence regarding some indicia may be sufficient for the Board to make a determination on the legal status of the track without evidence to analyze all potential indicia. N.Y.C. Econ. Dev. Corp., FD 36467, slip op. at 4.

Here, the Track’s relationship to the rail system supports the conclusion that it is excepted track, as it was not built to extend into a new market. See Union Pac. Corp., FD 32760, slip op. at 15; JGB Props. LLC, FD 35817, slip op. at 8; see also Tex. & Pac. Ry. v. Gulf, Colo. & S.F. Ry., 270 U.S. 266, 278 (1926). Reading’s Port Richmond Yard was located along the Delaware River in the area of the BLN. See Conrail, FD 32802, slip op. at 2. The BLN extended from Bridge Street at its north end through Reading’s Port Richmond Yard to Allegheny Avenue in the South. Id. Reading served shippers along the BLN via its Port Richmond Yard and Richmond Branch. Id. at 3. Thus, the BLN did not extend Reading’s operations into new territory but facilitated service to certain shippers located in the area of its Port Richmond Yard. See Tri-City R.R., FD 36037, slip op. at 4-5 (almost two-mile track built off a mainline to reach a new industrial park in Richland, Wash., did not extend into a new territory because the mainline had served the Richland area for decades); N.Y.C. Econ. Dev. Corp., FD 34429, slip op. at 5-6 (addition of slightly more than a mile to the end of existing track to reach a new transload facility and one other potential shipper did not penetrate new market because the geographic area had been historically served by the railroad in question and because the additional track facilitated but was not a prerequisite to serving the area).

The physical characteristics of the Track also support a finding that it has been excepted track. Specifically, the Track is short,²¹ stub-ended,²² and has no mileposts,²³ which “are classic indicia of excepted track.” Tri-City R.R., FD 36037, slip op. at 4-5.

The record does not provide much information regarding Reading’s intended use of the Track, but given that it was a stub-ended track near a port facility it is reasonable to assume it was used for ancillary operations such as switching, loading, and unloading. Indeed, RWIP repeatedly refers to Reading’s operations over the track as “switching” operations. (RWIP Rebuttal 5-7.) Moreover, while it is unclear how many shippers were served by the Track, a track may still be excepted track even if it connects multiple shippers to a main line. Tri-City R.R., FD 36037, slip op. 4-5.

²¹ RWIP states that the Track is 2,719 feet, (RWIP Pet., V.S. David Wolf 2), and the entire BLN is approximately 3 miles. Conrail, FD 32802, slip op. at 2.

²² See PBL Reply Ex. 2 at 4 (showing the BLN ending just north of Bridge Street); RWIP Pet., V.S. David Wolf 2 (stating that the Track ends near Bridge Street).

²³ PBL Reply 24.

The Board finds that the indicia discussed above are sufficient to conclude that the Track was excepted track under § 10906. See, e.g., id. at 4-5 (almost two-mile track used for loading, storage, or switching and built off a mainline to reach a new industrial park with 13 shippers, found to be excepted track because it did not extend into a new market; was short and stub-ended; and had no mileposts); Oakland Glob. Rail Enters.—Pet. for Declaratory Ord., FD 36168, slip op. at 9 (finding short, stub-ended track was excepted track where it was built to facilitate service to potential shippers at a port facility that had historically had rail service and likely to be used for loading and unloading operations at the port)

RWIP also claims that the Track is not excepted track because it does not connect to any common carrier lines owned by PBL and therefore could not have been built as an extension of an existing track system licensed by the Board. But the Track was built to support the operation of Reading's existing licensed rail line. As the agreement between PBL and Reading explains, Reading financed the construction of PBL-owned track, including the Track, in exchange for the right to use the track that it financed. (RWIP Opening Ex. 3 at 2-3); see also Conrail, FD 32802, slip op. at 2, 3; supra note 11. Moreover, the Board has previously found that track built and owned by a party other than a carrier to connect to a carrier's existing line, and to be used by that carrier, can be excepted track. See, e.g., JGB Props. LLC, FD 35817, slip op. at 8 & n.11; N.Y. City Econ. Dev. Corp., FD 34429, slip op. at 1-2, 7 (STB served July 15, 2004).

Current Use of the Track. RWIP further argues that there are currently no rail shippers using the Track and there is no evidence there will be any in the future. (RWIP Opening 28.) RWIP therefore suggests that there "is no reason" for the Board to find that the Track is within its jurisdiction any longer. (Id. at 28-31.) However, the Board's exclusive jurisdiction with respect to excepted track remains until the track is abandoned (notwithstanding that Board authority is not needed for abandonment to occur).²⁴ Because the parties have not fully briefed the issue of abandonment, the Board declines to address abandonment in this decision, without prejudice to the filing of a declaratory order seeking a Board determination on that matter.

It is ordered:

1. RWIP's petition for a declaratory order is denied.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

²⁴ See, e.g., 49 U.S.C. § 10906; Pinelawn Cemetery, FD 35468, slip op. at 11 (finding that excepted track remains subject to the Board's jurisdiction until it is abandoned). In Pinelawn Cemetery, the Board explained that the "key consideration" in determining whether excepted track has been abandoned is "whether or not the carrier has continued to exhibit a fixed and continuing intent to hold out to provide common carrier service to the public": i.e., whether the carrier believes it "need[s] this property to continue [its] interstate rail operations." Pinelawn Cemetery, FD 35468, slip op. at 10.