

Before the
Surface Transportation Board

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STB FINANCE DOCKET NO. 36078

ENTERED
Office of Proceedings
December 9, 2016
Part of
Public Record

PETITION FOR A DECLARATORY ORDER

(Hudson Street Industrial Track / Harsimus Branch

(Jersey City, Hudson County, NJ)

FOURTH SUPPLEMENT TO PETITION FOR DECLARATORY ORDER

ADDITIONAL REASONS WHY A PROCEEDING SHOULD BE INSTITUTED

1. Comes now your Petitioner, James Riffin (“**Riffin**”), who herewith Supplements the Petition for Declaratory Order that he filed on **October 14, 2016**, and in supplement states:
2. The following reasons further support the granting of Riffin’s Petition:
3. The Surface Transportation Board (“**STB**”) needs to declare, defend, protect and enforce its jurisdiction.
4. 49 U.S.C. 10903 prohibits carriers from abandoning lines of railroad without prior authority. 49 U.S.C. 10901 prohibits non-carriers from acquiring lines of railroad without prior authority. 49 U.S.C. 11101 compels carriers to provide rail service upon reasonable demand.
5. In *Railroad Ventures*, AB 556 (Sub. No. 2X), 299 F 3rd 523 (6th Cir. 2002), the STB found that the line of railroad involved, was being dismantled / encumbered, without authority.

6. In all *State of Maine* proceedings, the STB requires the carrier to provide the STB with documentation that the proposed activities of the non-carrier that is trying to acquire the real property underlying a line of railroad, will not materially interfere with the carrier's ability to provide rail service.

7. The owners / developers of the Metro Plaza Parcel ("**Forest City**"), in the reply they filed on December 5, 2016, at p. 2-4, ("**FC Reply**") certify that Forest City is in the process of constructing 12 multi-story structures, with "over 300,000 square feet of retail," on the Metro Plaza parcel, which construction commenced in 2015. Forest City further certifies that it intends to begin constructing a second multi-story building in 2017. FC Reply at 11. And Forest City acknowledges their multi-story buildings / retail space, "is being built on former yard property," FC Reply at 9, and that Conrail seeks "abandonment of both the Embankment and any railroad right-of-way that existed east past Marin Blvd." FC Reply at 7-8.

8. City et al. , in its Reply ("**City Reply**") at 11, acknowledges:

"Conrail in AB 167-1189X is basically seeking abandonment of whatever lines it operated east of Marin Blvd. Its intent is to encompass in that proceeding a line commencing at CP Waldo to its endpoint."¹

9. Then City et al. argue in their Reply at 12:

"all that is arguably necessary is that Conrail seek abandonment of a **through line** in the massive yard that used to exist east of Marin."

10. City et al. conclude by arguing:

¹ Conrail's Notice of Exemption states the beginning point is at CP Waldo, MP 0.0, and the endpoint is at MP 1.36. In the FD 34818 proceeding, Conrail provided a document stating that where the Harsimus intersects the West side of Marin Blvd is at MP 0.88. Appx 1. Which means that 0.48 miles (2,534 feet) of line lies East of the West side of where the line intersects with Marin Blvd.

“In these circumstances, the only issue in [the] abandonment proceeding is compliance with environmental and historic preservation laws for wherever the **through line** may be.”

11. Conrail continues to advocate:

“Conrail has consistently taken the position that neither the properties constituting the defunct Hudson Street IT nor the properties constituting the defunct Harsimus Cove Yard were conveyed as regulated lines of railroad. Rather, they constituted spur and yard track over which the Board had no abandonment authority.” Conrail Reply at 3.

12. The above admissions by parties other than Riffin, should make it abundantly clear to the STB that:

- A. There is a controversy as to whether there are one or more lines of railroad that traverse Metro Plaza;
- B. There is a controversy as to whether abandonment authority must be sought for the track segment(s) that traversed the Metro Plaza parcel;
- C. That Forest City presently is building a multi-story building, and plans to imminently build (in 2017) additional multi-story buildings, on the Metro Plaza parcel.

13. No abandonment authority has been obtained for any of the track segments that traversed the Metro Plaza parcel.

14. It appears to Riffin that Forest City, City et al., and Conrail, are all openly and notoriously defying the STB’s jurisdictional authority to regulate rail lines.

15. Riffin argues that the STB needs to institute a declaratory order proceeding, in order to declare, defend, protect and enforce, its regulatory authority over regulated lines of railroad, in order to prevent carriers, and non-carriers, from openly defying the STB’s authority to regulate

how lines of railroad are to be used (and not used).

16. In *Railroad Ventures, op. cit.*, and in *Sills Road Realty*, FD 35036, the STB instituted proceedings to declare, and to protect, its jurisdictional authority over lines of railroad.

17. Riffin argues that if the STB fails to institute a declaratory order proceeding, it will be **sending a message** to carriers and non-carriers: Carriers and non-carriers can construct structures on lines of railroad with impunity. No prior STB authority is needed. The STB will not prevent, nor sanction, unauthorized uses of lines of railroad / de facto abandonment of lines of railroad / de facto discontinuances of service over lines of railroad.

18. Riffin further argues: Since the Special Court no longer has any ‘expertise’ with regard to how tracks are used, the Special Court may desire to have the STB render an opinion as to whether Conrail’s use of the track segments at issue, would constitute ‘through traffic’ use / line of railroad use. The present-day Special Court is the U.S. District Court, D.C. District. Under the doctrine of primary jurisdiction, that court could well refer the issues back to the STB. So while the STB may not have the jurisdiction to determine how the track segments were conveyed to Conrail, the D.C. District Court, not being an ‘expert’ in railroad matters, may well desire to know the opinion of the STB.

19. And since Forest City has indicated that it would like to expedite the resolution of whether there are unabandoned lines of railroad traversing the Metro Plaza parcel, it would save time, and resources, if the STB addresses the issue first. Then there would be no need to refer the matter back to the STB, were these issues to be raised in the Special Court.

20. WHEREFORE, Riffin argues that the STB should / needs to, institute a declaratory order proceeding, to ascertain whether there are unabandoned lines of railroad traversing the Metro Plaza parcel, and if so, to order Conrail to order Forest City to cease and desist from altering the status quo of the Metro Plaza parcel, until such time that proper abandonment authority has been obtained.

Respectfully,

James Riffin
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CERTIFICATE OF SERVICE

I hereby certify that on or before the 9th Day of December, 2016, a copy of the foregoing Riffin's Fourth Supplement, was served on the following entities by e-mail: Charles Montange, counsel for City et al.; Daniel Horgan, counsel for the LLCs; Robert Jenkins, Adam Sloane, and Jonathan Broder, counsel for Conrail; Brendan Judge, Matthew Warren, Hanna Chouest, counsel for the owners / developers of the Metro Plaza parcel; Eric Strohmeyer, COO of CNJ Rail. A paper copy was also mailed to Mr. Montange.

James Riffin