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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36678

ENTERED
Office of Proceedings
October 12, 2023
Part of
Public Record

MMD INVESTMENT, LLC—PETITION FOR DECLARATORY ORDER

CONSOLIDATED RAIL CORPORATION'S REPLY

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Corporation*

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In a decision served on September 12, 2023, the Board directed Consolidated Rail Corporation (Conrail) to respond to certain questions relating to a railroad right of way (Subject ROW) over a property in Irvington, N.J., (Subject Property). The Subject Property is shown in Exhibit A to MMD Investment LLC’s Petition for Declaratory Order, filed May 30, 2023.

In response, Conrail states:

- Conrail retains an ownership interest in the Subject Property.¹
- Conrail’s ownership interest is related to its interest in an adjacent right of way.
- Conrail does not dispute that any prior or existing tracks over the Subject Property are “spur, industrial, team, switching, or side tracks” under 49 U.S.C. § 10906 that end at Nye Avenue.
- Conrail does not currently conduct rail operations over the Subject Property. Conrail does not have reasonably accessible records indicating when rail operations over the Subject Property ceased.
- Conrail has no planned future rail operations over the Subject Property.
- To the extent the concept of “abandonment” applies to tracks subject to 49 U.S.C. § 10906, Conrail recognizes any prior or existing tracks over the Subject Property might be considered “abandoned” in the sense that Conrail has not “continued to exhibit a fixed and continuing intent to hold out to provide common carrier rail service to the public” using the tracks. *JGB Properties, LCC—Petition for Dec. Order*, STB Docket No. FD 35817, slip op. at 7-8 (served May 22, 2015).

¹ Conrail notes that Exhibit C to MMD’s Petition is potentially misleading. As MMD states in its Petition, Exhibit C includes an “overlay showing Conrail’s *adjacent* right of way and tracks.” Petition at 5 (emphasis added). However, Exhibit C itself contains a label incorrectly indicating that the adjacent right of way is the “Parcel To Be Acquired From Conrail.”

- Conrail does not assert that the Subject ROW is still needed as part of the interstate rail system.

These responses have been verified by Steven J. Scullin, Conrail's Manager of Real Estate.

Respectfully submitted,

/s/ Michael L. Rosenthal
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VERIFICATION

I, Steven J. Scullin, Manager of Real Estate for Consolidated Rail Corporation, declare under penalty of perjury that I have read Consolidated Rail Corporation's Reply and that the information contained therein is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on October 12, 2023

/s/ Steven J. Scullin

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2023, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery on all parties of record in Docket No. FD 36678.

/s/ Michael L. Rosenthal