

Before the
SURFACE TRANSPORTATION BOARD

Docket No. FD 36678

**MMD INVESTMENT, LLC –
PETITION FOR DECLARATORY ORDER**

REBUTTAL OF MMD INVESTMENT, LLC

ENTERED
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Part of
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Dated: October 20, 2023

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REBUTTAL OF MMD INVESTMENT, LLC

MMD Investment, LLC (“MMD”) commenced this proceeding on May 30, 2023, by filing a petition for declaratory order (the “Petition”) asking the Board to declare that Consolidated Rail Corporation (“Conrail”) has abandoned a short segment of railroad right of way (the “Subject ROW”) located in Irvington, NJ. The Petition asks the Board to find that the Subject ROW was (a) Section 10906 ancillary track, and (b) that Conrail has not exhibited a continuing intent to provide common carrier service to the public over the Subject ROW, and that therefore, Conrail has abandoned the Subject ROW. Alternatively, the Petition seeks a declaration that Conrail does not need the Subject ROW to be part of its interstate rail system, and asks that the Board remove its jurisdiction over the Subject ROW because it is not necessary for any of Conrail’s Section 10906 operations.

In a decision served September 12, 2023, the Board instituted a declaratory order proceeding and accepted MMD’s Petition as its opening statement. The decision directed Conrail to file a verified reply that at a minimum addressed certain specified questions and allowed MMD to file a rebuttal within 10 days after Conrail filed its reply. Conrail timely filed its Reply on October 12, 2023, and MMD files this Rebuttal in response thereto.

Conrail’s Reply simply responds to the questions raised by the Board. It confirms the factual allegations in the Petition and raises no legal argument in opposition to the Petition’s

requests. Indeed, the Reply acknowledges that (1) any prior or existing tracks on the Subject ROW were ancillary tracks under 49 U.S.C. §10906, and (2) 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 Subject ROW, and that the Subject ROW might be considered “abandoned.” Conrail Reply at 2. Moreover, Conrail concedes that the Subject ROW is not still needed as part of the interstate rail system. *Id.* at 3.

Given that the Conrail Reply does not dispute the facts or oppose the relief requested in the Petition, MMD requests that the Board expeditiously grant the relief requested in the Petition and declare that the tracks and Subject ROW have been abandoned by Conrail.

Respectfully submitted,

/s/Eric M. Hocky

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2023, a copy of the forgoing Rebuttal was served by email on the following:

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