

30544
DO

SERVICE DATE - OCTOBER 13, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1176X)

CONSOLIDATED RAIL CORPORATION¹--ABANDONMENT EXEMPTION—
IN WICOMICO COUNTY, MD

Decided: October 8, 1999

By decision and notice of interim trail use or abandonment (NITU) served on April 15, 1997, the Board modified the prior decision issued in this proceeding (granting an exemption that would permit abandonment of the line in question) to the extent necessary to implement interim trail use/rail banking. The Board authorized a 180-day period for the Maryland Mass Transit Administration (MTA) to negotiate a trail use agreement with Conrail regarding: (1) the portion of its Mardella Industrial Track extending from milepost 40.80± to the junction with Conrail's Delmarva Secondary at milepost 42.00±, near Salisbury, MD; and (2) Conrail's Mill Street Industrial Track, extending from the connection with the Mardella Industrial Track at milepost 0.00± to milepost 0.60±, near Salisbury. These tracks, which are contiguous but split into two branches, total approximately 1.8 miles in length. By decisions served August 28, 1997, August 7, 1998, and March 29, 1999, the negotiating period was subsequently extended until September 16, 1998, March 17, 1999, and September 30, 1999, respectively.

On September 29, 1999, NSR filed a letter-fax requesting an extension of the negotiating period for an additional 180 days for that portion of the Mardella Industrial Track between milepost 41.45 and milepost 40.8, a distance of approximately 0.65-mile. According to NSR, MTA and it have agreed to continue trail use negotiations as to that 0.65-mile portion of the 1.8-mile line because that portion connects with other property owned or operated by MTA. NSR states that the parties need more time to negotiate and determine the disposition of the 0.65-mile segment.

¹ By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Consolidated Rail Corporation (Conrail), and the division of Conrail's assets, by CSX Corporation and CSX Transportation, Inc. (here referred to collectively as CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (NSR) (here referred to collectively as NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (Decision No. 89). CSX and NS effected control of Conrail on August 22, 1998, and they effected the division of Conrail's assets on June 1, 1999.

As to the remaining approximately 1.15 miles of the Mardella Industrial Track between mileposts 41.45 and 42.00, and the contiguous Mill Street Industrial Track between mileposts 0.00 and 0.60, NSR states that the parties have agreed to discontinue trail use negotiations. NSR therefore gives notice of consummation of the abandonment of the remaining 1.15-mile track² and states that this track will be reclassified as industrial lead or spur track and that service will be retained over the track.³ Specifically, NSR avers that it will work with local shippers and governments, as well as MTA, on rehabilitating the segment in an effort economically to retain rail service to shippers on that segment.

An extension of the trail use negotiating period can be granted as long as the Board retains jurisdiction over the involved railroad right-of-way⁴ and the carrier is willing to continue negotiations. Inasmuch as NSR has not consummated the abandonment of the 0.65-mile portion of the Mardella Track as described and has indicated a willingness to continue to negotiate, the extension request can be granted.

The requested extension will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the extension request will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period for the 0.65-mile segment of the Mardella Industrial Track between mileposts 41.45 and 40.8 is granted.

² As a result of NS' acquisition of control of Conrail, NSR has inserted itself as the railroad party authorized to negotiate with MTA under the NITU and to consummate abandonment of the remaining portion of track in this proceeding. NSR states in its letter that Pennsylvania Lines LLC (PRR) [a wholly owned subsidiary of Conrail for which NS has the exclusive authority to appoint officers and directors (see Decision No. 89, slip op. at 24)], has succeeded to ownership of the line at issue in this proceeding, and that NSR is the operator of the PRR property and has authority to act on matters relating to abandonment of any part of the property. As such, NSR is now the common carrier as to this property and is a proper party both to negotiate for trail use and to provide notice of abandonment.

³ NSR's intent is that the segment will no longer be a "line of railroad," so that it would be able to stop service on the segment at some point in the future without further Board approval if economic circumstances warrant cessation.

⁴ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

STB Docket No. AB-167 (Sub-No. 1176X)

2. The NITU negotiating period with respect to that segment is extended to March 28, 2000.

3. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary