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SERVICE DATE - JUNE 3, 2004

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION - ABANDONMENT EXEMPTION -
LANCASTER AND CHESTER COUNTIES, PA

Decided: June 2, 2004

In 1989, Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F- Exempt Abandonments to abandon a segment of rail line commonly known as the Enola Branch. The Enola Branch extended generally westward from Milepost 0.0 in Parkesburg, Chester County, PA, to Milepost 33.9 in Manor Township, Lancaster County, PA.¹

By decision served February 22, 1990, the Board's predecessor, the Interstate Commerce Commission (ICC), authorized the abandonment subject to a historic preservation condition. The condition required Conrail to retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).²

While the Board's Section of Environmental Analysis (SEA) was working through the steps of the NHPA process, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire Enola Branch. The Board denied FAST's request in a decision served October 2, 1997, and FAST's petition for reconsideration in a decision served August 13, 1999. FAST sought judicial review of these two decisions.

In Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Bd., 252 F.3d 246 (3d Cir. 2001), the United State Court of Appeals for the Third Circuit vacated the Board's 1997 and 1999 decisions and remanded the case to the Board, ruling that the Board had failed to comply fully with the procedural requirements of the NHPA. SEA has reinitiated the historic

¹ Conrail described the Enola Branch in its 1989 notice of exemption filing as two parallel tracks of a double-tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.

² Under section 106 of the NHPA, Federal agencies are required to consider the effects of their decisions on historic properties.

preservation review process pursuant to the court's remand and has nearly completed the necessary process.³

In a petition filed on March 22, 2004, the County of Lancaster, PA (County), claims that Norfolk Southern Railway Company (NS)⁴ is now willing to negotiate the establishment of a recreational trail based on a statement found in SEA's Notice to the Parties issued on October 20, 2003. Consequently, the County asks the Board to issue a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), covering a portion of the Enola Branch between Milepost 4.0 near the Lancaster County, PA-Chester County, PA municipal boundary line and Milepost 27.0 near Shenks Ferry, PA. The County further argues that NS's willingness to negotiate a trail use arrangement also justifies reconsideration of the prior decisions in this proceeding. NS filed a reply on March 23, 2004, opposing the County's trail use request and other relief sought by the County.

DISCUSSION AND CONCLUSIONS

The County's trail use request will be denied. A NITU can be issued only if (1) a prospective trail sponsor files the required statement of willingness and agrees to rail banking, and (2) the railroad voluntarily agrees to negotiate a Trails Act arrangement with the trail sponsor.⁵ Therefore, an interim trail use arrangement cannot be imposed on an unwilling railroad, and NS has not agreed to negotiate for interim trail use pursuant to the County's request.

NS states in its reply that it is not willing to negotiate with the County for interim trail use because the County has failed to satisfy the criteria under which the carrier would consider a trail use request. NS further explains that it wants to promptly conclude the proceeding and

³ SEA provides a more detailed explanation of the reinitiated historical review process and a fuller description of the proceeding's history in a Notice to the Parties issued on April 12, 2004.

⁴ Conrail sold the portion of the Enola Branch from Milepost 1.5 to Milepost 4.0 to the Southeastern Pennsylvania Transportation Authority in 1996. On June 23, 1997, NS and CSX Transportation, Inc. sought permission from the Board to acquire Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail acquisition proposal. CSX Corp. et al.-Control-Conrail Inc. et al., 3 S.T.B. 196 (1998). The Enola Branch property was allocated to Pennsylvania Lines LLC, a subsidiary of Conrail, as part of the Conrail acquisition transaction. NS operates the Pennsylvania Lines LLC allocated assets under an operating agreement approved by the Board.

⁵ See National Wildlife Fed'n v. ICC, 850 F.2d 694 (D.C. Cir. 1988).

convey the right-of-way to the Townships.⁶ Clearly, because NS is unwilling to negotiate, a NITU cannot be issued. And, because NS does not wish to negotiate, there is no need to reconsider any prior decisions in this proceeding.

It is important to note that the denial of the County's trail use request does not foreclose the possibility that all or a portion of the Enola Branch could be converted into a recreational trail at a later date. If the Board ultimately grants the abandonment authority to NS and the carrier consummates the abandonment,⁷ the parties could enter a private agreement to create a recreational trail. However, such an arrangement would not involve this agency because the line would no longer be subject to the Board's jurisdiction.

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

It is ordered:

1. Lancaster County's request for issuance of a NITU is denied.

⁶ Conrail entered into a settlement agreement with the Townships of West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic, and Conestoga. Pursuant to the settlement agreement, Conrail would convey segments of the abandoned line to the respective Townships in which each segment is located; the Townships would assume ownership and future maintenance responsibility for the line crossing structures; Conrail would contribute an agreed sum of money to the Townships for future maintenance of crossing structures that are to remain in place; and other crossing structures deemed serious highway safety hazards would be removed by either Conrail or a specific Township.

⁷ The Northeast Office of Rails-to-Trails Conservancy (Conservancy) filed a "motion to postpone final decision" on May 4, 2004. The Conservancy asks the Board to postpone granting the final abandonment authority until NS has complied with the Final Memoranda of Agreement (MOA). The Board also received a filing from Randolph J. Harris, a representative of FAST, asking the Board, among other things, to postpone granting the final abandonment authority. These filings will be dealt with at a later date.

2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary