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SEC

SERVICE DATE - FEBRUARY 5, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34319

CONSOLIDATED RAIL CORPORATION —
DECLARATORY ORDER PROCEEDING

Decided: February 4, 2004

By decision served October 10, 2003, the Board instituted a declaratory order proceeding to resolve a controversy whether the preemption provision of 49 U.S.C. 11321(a) applied to a matter that was in dispute between Consolidated Rail Corporation (Conrail) and AT&T Communications, Inc. (AT&T).

By pleading (styled “Notice of Settlement and Stipulation of Dismissal of Declaratory Order Proceeding With Prejudice”) jointly filed by Conrail and AT&T on February 3, 2004, Conrail and AT&T have advised that they have reached a settlement that has rendered moot this proceeding. Conrail and AT&T have therefore asked that this proceeding be dismissed with prejudice, with each party to bear its own costs. Conrail and AT&T have also advised that, in the related court action (docketed as AT&T Communications, Inc. v. Consolidated Rail Corporation, Civil Action No. 03-00147 (CMR)) that was pending before the United States District Court for the Eastern District of Pennsylvania, they have filed, under Rule 41(a) of the Federal Rules of Civil Procedure, a self-executing “Stipulation of Dismissal with Prejudice.”

In view of the settlement of the underlying dispute, this proceeding will be discontinued, and Conrail’s declaratory order petition (filed February 25, 2003) will be dismissed with prejudice, with each party bearing its own costs. In view of the self-executing Rule 41(a) stipulation filed in this District Court, the Board will not serve a copy of this decision on the court.

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

It is ordered:

1. This proceeding is discontinued, and Conrail’s declaratory order petition (filed February 25, 2003) is dismissed with prejudice.

2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary