

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-167 (Sub-No. 1163X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--  
IN NORTHAMPTON COUNTY, PA

Decided: December 9, 1996

By petition filed July 2, 1996, Consolidated Rail Corporation (Conrail) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 3.8 miles of railroad extending from milepost 79.0 to milepost 82.8 in Northampton County, PA. A request for issuance of a notice of interim trail use/rail banking (NITU) and imposition of a public use condition was filed by the Director of Planning and Public Works on behalf of the Township of Palmer, PA (Palmer). The United Transportation Union seeks imposition of labor protective conditions. We will grant the petition and issue a notice of interim trail use or abandonment, subject to public use, trail use, and standard labor protective conditions.

BACKGROUND

The line at issue, known as the E&N Industrial Track (E&N), begins at milepost 79.0 and ends where it connects with other Conrail tracks at milepost 82.8 in the town of Kepler's Mill, PA. The line has been out of service since October 1995 because it can no longer sustain safe operations. Between January and October 1995, the only recent shipper, Mack Printing, received 32 carloads and shipped 1 carload. Since October 1995, Mack Printing has received shipments by truck from its rail-served facility less than 10 miles away in Stockerstown, PA. During 1994, the line handled 27 carloads. Conrail has notified former users of the line of its intent to abandon the line. Binney & Smith informed Conrail that it is no longer engaged in manufacturing at the site served by the line. Express Warehouse and James River Dixie, the other former shippers, have not objected to the abandonment.

Conrail estimates a cost of approximately \$498,930 to restore the line to service. According to Conrail, there is little prospect for developing additional freight business on the line in the foreseeable future.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of filing an abandonment

application for this line, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. In addition, an exemption will foster sound economic conditions and encourage efficient management by permitting Conrail expeditiously to avoid the cost of operating and maintaining an uneconomic line [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

While the transaction appears to be limited in scope, we need not make that determination here. Rather, we find that regulation is not necessary to protect shippers from the abuse of market power. The shippers and receivers on the line have alternative rail and truck service. Conrail has notified us that it served copies of its petition on all shippers and receivers on the line, and that none has objected to the proposed abandonment. Nevertheless, to ensure that the shippers are informed of our action, we will require Conrail to serve each of the shippers and receivers with a copy of this decision within 5 days after the service date of this decision, and to certify to us that it has done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect employee interests. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

Conrail has submitted an environmental report with its petition, and has notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impact of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) examined the environmental report, verified its data, and analyzed the probable effect of the proposed abandonment on the quality of the human environment. On September 12, 1996, SEA served an environmental assessment in which it recommended that no environmental conditions be imposed here, and found that the right-of-way may be suitable for other public use after abandonment. Based upon SEA's recommendations, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

Palmer requests imposition of an interim trail use/rail banking condition under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and has submitted a statement of willingness to assume financial responsibility for a portion of the right-of-way pursuant to 49 CFR 1152.29. The portion over which Palmer seeks to negotiate for interim trail use is between milepost 79.0 and milepost 86.5.<sup>1</sup> Conrail has indicated its willingness to negotiate with Palmer.

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<sup>1</sup> Although Palmer seeks trail use/public use between mileposts 79.00 and 86.25, Conrail seeks in this proceeding to abandon only that portion of the line between mileposts 79.0 and 82.8. Therefore, the trail use and public use conditions will be considered to embrace only the latter portion.

The criteria for imposing trail use and rail banking have been met. Accordingly, we will accept the request and Conrail's response and will issue a Notice of Interim Trail Use (NITU) covering that portion of the line Conrail seeks to abandon. This does not, however, preclude other parties from filing requests for interim trail use within 10 days after the publication of the notice of exemption in the Federal Register. Nor does it preclude Conrail, as owner of the line, from negotiating with other parties, in addition to Palmer, during the NITU period. If, within the 10-day period following publication of the notice of exemption, additional trail use requests are filed, the railroad is directed to respond to them. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, Conrail may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to trail use, Palmer also requests imposition of a public use condition under 49 U.S.C. 10905 and seeks an order: (1) prohibiting Conrail from disposing of the corridor (except the tracks, ties, and signal equipment); and (2) barring Conrail from removing potential trail-related structures such as bridges, trestles, culverts, and tunnels on the right-of-way for 180 days. Palmer states that the rail corridor in question is situated along a scenic stream and will connect a public park to a major residential area. According to Palmer, the corridor would make an excellent trail and provides important wildlife habitat and green space. Palmer requests the full 180 days so that it may have time to assemble and review title information, complete a trail plan, and negotiate with the carrier.

We have determined that persons who file under the Trails Act may also file for a public use under 49 U.S.C. 10905. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. Palmer has met the public use criteria by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the desired duration of the condition; and (4) justification for the time sought. 49 CFR 1152.28(a)(2). A 180-day public use condition will be imposed, commencing with the effective date of this decision and notice. The public use negotiating period cannot be extended. A public use condition is not imposed for the benefit of any one potential user, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

Operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. An offer of financial assistance (OFA) to continue rail freight service under 49 U.S.C. 10904 takes precedence over both the interim trail use/rail banking and the public use procedures. Accordingly, if a statement of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this decision and notice will be postponed for 10 days beyond the effective date set forth below. In addition, the effective date may be further postponed at later stages of the OFA process. 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the petition for exemption will be dismissed

and public use and trail use opportunities (if any) arising out of this proceeding would end. If, on the other hand, the OFA procedure is terminated without a sale, the public use and trail use procedures could proceed.

As conditioned, the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for the opportunity to negotiate for interim trail use and rail banking under 49 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905, submitted by the Township of Palmer, PA, is accepted.

2. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Conrail of the above-described 3.8-mile rail line, subject to the following conditions: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) Conrail shall comply with the terms and conditions for implementing trail use/rail banking as set forth below; and (3) Conrail shall keep intact the corridor (except the tracks and ties) and all the right-of-way trail-related structures such as the bridges, trestles, culverts and tunnels for 180 days from the effective date of this decision and notice to enable any state or local government agency or other interested person to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before the 180-day public use period expires, the public use process will be terminated as follows: if the trail use agreement covers the entire line, the public use process is terminated; if, however, a trail use agreement is executed only for a segment of the line, the public use process is terminated only for that line segment.

3. Subject to the conditions set forth above, Conrail may discontinue service and salvage track and track materials consistent with public use after the effective date of this decision and notice.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, Conrail may fully abandon the line, provided the conditions imposed in this proceeding are met.

8. Notice will be published in the Federal Register on December 20, 1996.

9. Petitioner is directed to serve a copy of this decision on all shippers and receivers on the line within 5 days after this decision is served, and to certify to us that it has done so.

10. Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 19, 1997.

11. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)<sup>2</sup> and requests for trail use/rail banking under 49 CFR 1152.29 must be filed by December 30, 1996; petitions to stay must be filed by January 6, 1997; and petitions to reopen must be filed by January 14, 1997.

12. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2).

13. Offers of financial assistance and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams  
Secretary

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<sup>2</sup> See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).