

SURFACE TRANSPORTATION BOARD¹

DECISION

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

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

Decided: September 23, 1997

BACKGROUND

On October 3, 1989, Conrail filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 66.5 miles of track called the Enola Line in Lancaster and Chester Counties, PA. By decision served February 22, 1990, the ICC imposed a historic preservation condition that 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. The ICC also imposed public use and interim trail use conditions and permitted Conrail, subject to these conditions, to salvage track and material from the line. The decision provided that if no interim trail use agreement was reached, Conrail was authorized to fully abandon the line. The period for negotiating trail use was subsequently extended to April 15, 1993. By decision served April 19, 1993, the trail use condition was vacated, and Conrail was permitted to abandon the line. No reference was made, however, to the previously imposed historic preservation condition.

By petition filed April 15, 1996, a group called the Friends of the Atglen-Susquehanna Trail, Inc. (FAST), seeks to reopen the proceeding. Specifically, FAST requests that the historic preservation condition previously imposed be broadened from applying only to the bridges on the line to apply to the entire property as a linear resource. To justify reopening, FAST includes "new information" consisting of a letter from Brenda Barrett, Director of the Pennsylvania Historical and Museum Commission of the Bureau of Historic Preservation (SHPO), to Wendy Tippetts of an organization known as "TWO." In that letter, Ms. Barrett states that: "It is the opinion of the State Historic Preservation Office that the following properties are eligible for listing in the National Register of Historic Places: Low Grade Freight, Enola Branch, Atglen & Susquehanna Branch, A&S, Chester Cumberland, Lancaster, and York Counties. This early 20th century line meets National Register criteria A and C for the period 1903 to 1944." The letter is dated February 24, 1994, and the ICC was sent a copy. Conrail apparently was not notified of the letter at the time.

FAST also includes a letter, dated March 20, 1996, sent to it by Ms. Elaine Kaiser, Chief of the Board's Section of Environmental Analysis. Ms. Kaiser explains that historic preservation conditions the ICC (and now the Board) imposes do not normally expire or lapse due to the

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICC Termination Act or the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This decision relates to proceedings that were pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 13709-13711. Therefore, this decision applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

passage of time, and that post-imposition abandonment authorization does not implicitly vacate such a condition. Rather, it remains in effect until the Board issues a decision removing or modifying the condition.

Conrail and the Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission (PUC) replied to FAST's petition. PUC notes that, pursuant to the ICC's April 19, 1993 abandonment authorization, Conrail has removed the rails, ties, and other track materials from the right-of-way. PUC claims that this constitutes consummation of the abandonment and terminates the Board's jurisdiction in this matter.

Conrail explains the numerous actions it took to comply with the section 106 process, noting that the last action it took in this regard was the submission of various maps to the SHPO on January 30, 1990. The SHPO acknowledged receipt of the maps by letter to Conrail of March 5, 1990, and added it would "advise you shortly what additional archaeological survey would be required if the bridges were to be removed." Conrail states it has not received any further identification of archaeological sites. Conrail argues that, with termination of the negotiating period for trail use and its consummation of the abandonment, the only possible further action by the Board is completion of the section 106 process.² Conrail claims there is no basis for reassessment of the line's eligibility for inclusion in the National Register.

DISCUSSION AND CONCLUSIONS

FAST's petition will be denied. Neither FAST nor the SHPO has provided any justification for the SHPO's apparently³ changed position with regard to eligibility of the entire line in the National Register. Indeed, the SHPO letter submitted by FAST does not even acknowledge that the SHPO had ever reached a previous determination on this matter. Although FAST maintains that it furnished additional information about the line to the SHPO, this information has not been supplied to Conrail or submitted for entry into the public record in this proceeding. It is clear that the SHPO was originally concerned only with the eligibility of certain bridges and archaeological sites for section 106 purposes. The fact that certain items were included in the SHPO's original opinion while others were excluded indicates that the SHPO did not originally consider the entire line eligible.

In addition to the lack of justification for broadening the exemption to encompass the entire line as a linear resource, the amount of time that has elapsed since imposition of the original condition--four years--dictates against its expansion. Conrail has had the opportunity to work on satisfying the originally imposed condition. To expand it at this time would only add further delay to the process. Although the Board retains jurisdiction over this matter until completion of the section 106 process, we will not broaden the previously imposed condition at this late date.

We note, however, that the original condition imposed by the ICC has never been modified to apply only to the bridges determined by the SHPO as eligible for listing in the National Register and to the potential archaeological sites near certain bridges. We will do so at this time.

As conditioned, this action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

² Conrail expresses its belief that the section 106 process expired 330 days after its issuance and that the process has been completed; however, it is not arguing that position at this time.

³ Although its caption lists the docket number in this proceeding, Ms. Barrett's February 24, 1994 letter to TWO refers to a project including additional lines and additional counties. It is unclear what this project entails.

2. The historic preservation condition imposed in the decision served and published in the Federal Register on February 22, 1990, is modified to read as follows: Conrail shall retain its interest in and take no steps to alter the historic integrity of the 32 bridges eligible for the National Register and the potential archaeological sites near 36 of the bridges.

3. The request by FAST to expand this condition to include the entire line as a linear resource is denied.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary