

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1020X

EAST PENN RAILROAD, LLC—ABANDONMENT EXEMPTION—IN BERKS AND
MONTGOMERY COUNTIES, PA

Decided: March 23, 2009

By decision served on November 18, 2008, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by East Penn Railroad, LLC (ESPN) of an 8.6-mile line of railroad extending from milepost 0.0 at Pottstown to milepost 8.6 at Boyertown, in Berks and Montgomery Counties, PA. This grant of authority was made subject to public use, trail use, environmental, and standard employee protective conditions. The exemption was scheduled to become effective on December 18, 2008, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by November 28, 2008, and, following a number of filings and Board decisions, the exemption subsequently became effective on February 13, 2009.¹

On March 19, 2009, Montgomery County (County), the party that sought the trail use and public use conditions, filed a petition requesting their withdrawal and termination. The County asks that the Board act expeditiously so that the line can be sold for continued rail use on or about March 24, 2009. Accordingly, the proceeding will be reopened, the County will be permitted to withdraw its trail use and public use requests, and the trail use and public use conditions will be terminated.

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

¹ Berks County (Berks) filed an OFA to purchase the line on November 26, 2008, and the Board found it financially responsible in a decision served on December 2, 2008. Berks then petitioned the Board on December 24, 2008, to set the terms and conditions of the line sale. The Board set the terms and conditions on January 28, 2009. Berks rejected the terms and conditions, and the Board terminated the OFA process and made the abandonment authority effective. Berks sought judicial review of the Board's decision setting terms and conditions, and Berks filed a petition with the Board asking that the Board stay its decision setting the terms and conditions pending judicial review. Berks' stay request remains pending at this agency and will be addressed in a separate decision.

It is ordered:

1. This proceeding is reopened.
2. Montgomery County is permitted to withdraw its trail use and public use condition requests.
3. The trail use and public use conditions imposed in this proceeding are terminated.
4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary