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SERVICE DATE-LATE RELEASE November 8, 1996

DECISION

S.B. Docket No. AB-167 (Sub-No. 1176X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--  
IN WICOMICO COUNTY, MD

Decided: November 5, 1996

By petition filed on October 25, 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: (1) the portion of its Mardella Industrial Track extending from milepost 40.80± to the junction with Conrail's Delmarva Secondary at milepost 42.00±, near Salisbury, MD; and (2) its Mill Street Industrial Track extending from the connection with the Mardella Industrial Track at milepost 0.00± to milepost 0.60±, near Salisbury. The total distance involved is 1.80 miles in Wicomico County, MD. Several parties<sup>1</sup> have filed comments expressing their opposition to the proposed abandonment and requesting oral hearing.

On September 10, 1996, Conrail filed a notice of intent to abandon the line segments that are the subject of this petition, signaling that it intended to file an application under 49 U.S.C. 10903 for authority to abandon the line. The notice of intent was assigned STE Docket No. AB-167 (Sub-No. 1169). Previously, on August 27, 1996, Conrail had filed a petition requesting that the Board waive its existing rules for the handling of abandonment and discontinuance applications at 49 CFR 1152.13(d) and 49 CFR part 1152, subparts C and D, and that the Board process the application under the rules it proposed for adoption in Abandonment and Discontinuance of Rail-Lines and Rail Transportation Under 49 U.S.C. 10903, S.B. Ex Parte No. 537 (S.B. served Mar. 15, 1996). The petition for waiver was denied by decision served on September 26, 1996.

When Conrail filed the instant petition, it incorrectly assigned it Sub-No. 1169X. Because Sub-No. 1169 refers to the docket which includes Conrail's notice of intent to file an application for abandonment authority, the petition for waiver, and the decision on the petition, this petition for exemption has been assigned an altogether new subnumber and docketed Sub-No. 1176X.

Exemption proceedings are informal, and public comments usually are not sought during the consideration of a petition for exemption. However, the Board may consider during its deliberations any public comments filed in response to the petition. 49 CFR 1121.4(c). If the impact of the proposed exemption cannot readily be ascertained from the information contained in the petition or accompanying submission, or if significant adverse impacts might occur if the proposed exemption were granted, the Board may direct that additional information be filed or request public comments. 49 CFR 1121.4(d)(1) and (2).

By filing a notice of intent to seek authority to abandon these line segments in Sub-No. 1169, Conrail indicated that it expected opposition to the proposed abandonment. Indeed, the filing of the notice prompted several interested parties to express their opposition and to request oral hearing.<sup>2</sup> At this time, from the information contained in the petition and the comments in opposition, it appears that the Board will be able to reach a decision on the basis of written statements and thus that oral hearing is not necessary. The requests for oral hearing will therefore be denied. Because Conrail has chosen to file a petition for exemption under section 10502, rather than an application for abandonment authority under section 10903, despite the fact that Conrail anticipated opposition to the proposed abandonment and opposition has come forward, it is necessary to establish a procedural schedule to clarify the process and permit any interested person to file comments on the proposed exemption and to permit Conrail to reply to the comments. A procedural schedule will therefore be set forth in the ordering paragraphs below.

Conrail will also be required to serve a copy of this decision on all shippers on the line segments proposed to be abandoned and on all persons on whom it served its notice of intent in STE Docket No. AB-167 (Sub-No. 1169) to ensure that they will have an opportunity to comment on the proposal in the appropriately numbered proceeding.

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<sup>1</sup> Delmarva Chemical Manufacturing Corp., The Farmers & Planters Company, Salisbury Brick Company, Inc., Salisbury Building Supply Co. Inc., Salisbury Wicomico Economic Development, Wicomico County, Wicomico County Farm Bureau, Inc., and State Delegate Norman H. Conway.

<sup>2</sup> Comments on the proposed exemption to permit Conrail to abandon the above-described line segments will be due on December 9, 1996. Comments should refer specifically to STE Docket No. AB-167 (Sub-No. 1176X).

It is ordered:

1. The requests for oral hearing are denied.
  2. Comments on the proposed exemption to permit Conrail to abandon the above-described line segments will be due on December 9, 1996. Comments should refer specifically to S.B. Docket No. AB-167 (Sub-No. 1176X).
  3. Conrail's reply to the comments is due on December 19, 1996.
  4. Conrail shall serve a copy of this decision on all shippers on the above-described line segments and on all persons on whom it served its notice of intent in STE Docket No. AB-167 (Sub-No. 1169) within 5 days after the date of service of this decision and certify to the Board that it has done so.
  5. This decision is effective on its service date.
- By The Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary