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SEA

SERVICE DATE – SEPTEMBER 30, 2008

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-1020X

**East Penn Railroad, LLC – Abandonment Exemption –
in Berks and Montgomery Counties, PA**

BACKGROUND

In this proceeding, East Penn Railroad, LLC (ESPN) filed a petition of exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 in connection with the abandonment of a line of railroad in Berks and Montgomery Counties, PA. The rail line (Line) proposed for abandonment extends from milepost 0.0 at Pottstown, PA, to milepost 8.6 at Boyertown, PA, a distance of 8.6 miles and traverses U.S. Postal Service Zip Codes 19464 and 19515. A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the petition becomes effective, ESPN states that it intends to salvage the rail, track material, and crossties while leaving the bridges, culverts, and ballast in places while it explores rail-banking the Line.

ENVIRONMENTAL REVIEW

ESPN has submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. ESPN served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)]. The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

The proposed abandonment would permit ESPN to eliminate 8.6 miles of rail line located in Berks and Montgomery Counties, PA. According to ESPN, it acquired the Line from the Pennsylvania Department of Transportation in 2001. One of ESPN's predecessors, Penn Eastern Rail Lines, Inc., acquired the Line in July 2003, from Berks County. Since 1990, the only freight traffic that has moved over the Line has been inbound plastic pellets to Drug Plastic Glass Company (Drug Plastic) and occasional outbound shipments of containerized hazardous waste from Cabot Corporation (Cabot). ESPN states that all inbound and outbound shipments are transloaded from its Boyertown railyard. The plastic pellet shipments are then reloaded onto

truck for delivery to Drug Plastic located on the outskirts of Boyertown. The Applicant's records indicate that a total of 92 carloads were moved in 2007, 93 carloads in 2006, and 95 carloads in 2005. In recent years, the number of carloads has averaged about 80 per year or about one shipment per day per week or less. In an e-mail to SEA dated September 18, 2008, ESPN states that it was notified by Drug Plastic that Drug Plastic would no longer utilize the Line.

According to ESPN, it has performed only limited maintenance on the Line because of the low rail volume. ESPN also states that no passenger traffic would be diverted to other modes as a result of the proposed abandonment. Therefore, the proposed abandonment would result in limited impacts to rail freight operations and maintenance practices.

In 2004, the Line was damaged and taken out of service for almost six months as a result of a truck collision that destroyed a low clearance bridge, thus prevented rail access to both Drug Plastic and Cabot. ESPN's predecessor completed repair of the bridge in April 2005 and resumed rail service. ESPN states that it has been unable to develop any new rail customers and in fact, the total freight revenues received since April 2005 have not covered the cost of repairing the bridge.

ESPN is currently making other nearby transload facilities available. The new facilities would add about ten miles to the final truck delivery. Consequently, the proposed abandonment would have limited adverse effects on regional or local transportation systems and patterns.

ESPN states that it believes that the proposed abandonment is not inconsistent with local land use plans. Furthermore, if approved, the abandonment would eliminate eight public and two private at-grade crossings.

According to ESPN, the proposed abandonment would result in limited impacts on overall energy efficiency. The proposed new transload facility would add about ten miles to the final truck route. Using a conversion of four trucks per rail car, there would be about 3,200 additional truck miles per year, or 13.3 additional truck miles per work day. Due the low volume of existing rail traffic, crews from nearby rail lines would be used to handle the rail traffic and service the locomotive. ESPN also believes that the proposed abandonment should not result in any diversions of rail traffic to motor carriage. The only likely impact would be the change in location of the transload facility described above. ESPN states that even if all rail traffic were to shift entirely too motor carriage, the number of rail carload diversions, at current traffic levels, would be about 80 per year, or about 9.3 carloads per mile per year.

ESPN states that there is no reasonable alternative to the proposed abandonment. ESPN states that there is only a single rail customer on the Line and no location of a new rail served industry along the Line is anticipated. Additionally, there is also no overhead traffic. Therefore, if the abandonment is approved, SEA anticipates no adverse effects on regional or local transportation systems and patterns.

Salvage Activities

If the petition becomes effective, the ESPN states that it intends to salvage the rail, track material, and crossties while leaving the bridges, culverts, and ballast in places while it explores rail-banking the Line.

In a letter dated July 10, 2008, Ms. Denise Pyers, Bureau of Rail Freight, Ports & Waterways, Pennsylvania Department of Transportation (PA-DOT), states that the Environmental Report was forwarded to PA-DOT's Engineering Districts 5 and 6 for review. PA-DOT also requests that the Board consult with the Pennsylvania Historical Commission (SHPO). Furthermore, PA-DOT states that it does have concerns regarding the public highway rail crossings (at-grade and grade separated) and requests that the crossings be abolished in an appropriate manner and with the approval of the Pennsylvania Public Utility Commission. Accordingly, we will recommend a condition requiring ESPN to consult with the Pennsylvania Public Utility Commission prior to commencing any salvage activities.

In a letter dated April 24, 2008, the U.S. Fish and Wildlife Service, Pennsylvania Field Office, has determined that the proposed abandonment would not likely adversely affect the federally listed bog turtle.

In a letter dated May 22, 2008, Mr. Frank Ciafrani, U.S. Army Corps of Engineers (Corps), Philadelphia District, states the project, as proposed, will not require the approval of the Corps and does not involve activities in Federally regulated waters or wetlands.

In a letter dated July 29, 2008, Mr. Edgar White, Natural Resources Conservation Service, states that the proposed abandonment would not affect prime agricultural land.

In a letter dated May 6, 2008, Ms. Kathleen McGinty, Pennsylvania Department of Environmental Protection (DEP), states that a National Pollutant Discharge Elimination System Permit will be required if the proposed project involves greater than five acres of earthmoving or greater than one acre with a point of discharge. However, generally speaking, the DEP does not consider removal of rail tracks and earthmoving activity as long as the rail bed remains undisturbed; however, removal of existing railroad bridges and/or culverts is considered an earthmoving activity. The DEP also notes that even if the proposed project is determined to be exempt from the NPDES permit requirement, DEP will require ESPN to implement proper erosion and sedimentation controls. The DEP requests the ESPN contact the Montgomery County Conservation District (610-489-4506) and the Berks County Conservation District (610-372-4657) to determine if NPDES permit or an erosion and sedimentation control plan approval are required. Accordingly, we will recommend a condition requiring ESPN to consult with the Berks and Montgomery County Conservation Districts prior to commencing any salvage activities.

According to ESPN, the proposed abandonment would not affect the transportation of hazardous materials. Furthermore, ESPN states that there are no known hazardous material

waste sites or sites where known hazardous material spills have occurred on or along the right-of-way.

SEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

In an e-mail dated June 18, 2008, the U.S. Department of Commerce, National Geodetic Survey (NGS) indicates that one geodetic station marker may be located in the area of the proposed abandonment. Therefore, SEA will recommend that the Board impose a condition requiring ESPN to notify the NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts.

HISTORIC REVIEW

In its Environmental and Historic Report, ESPN states that the Line was originally constructed in 1869 and extended from Barto, PA, to Stowe, PA, a distance of approximately 13 miles. ESPN states that the Line was originally constructed to serve the iron mines near Barto as well as to haul the iron ore from Barto to the foundry at Boyertown. With the closure of the iron mines in the 1900's, the Reading Company (Reading) abandoned the 4.4 miles of the Line located between Barto and Boyertown. Passenger service was provided over the Line from its construction in 1869 until the 1930's.

According to ESPN, shortly after the Line's construction, it was leased to the Philadelphia and Reading Rail Road (P&R) and became the P&R's Colebrookdale Branch. In 1924, the P&R was reorganized as the Reading and the Colebrookdale Branch continued to be operated by the Reading. In 1971, the Reading declared bankruptcy and was finally merged into the Consolidated Rail Corporation (Conrail) in April 1976. Conrail continued to operate the Colebrookdale Branch for several years until it was designated to be abandoned. The PA-DOT agreed to acquire the Colebrookdale Branch from Conrail in 1982 and subsequently entered into a lease agreement with the Anthracite Railway (ATRW) to operate over the Colebrookdale Branch. In 1990, PA-DOT transferred the lease from ATRW to the Blue Mountain and Reading Railroad (BMR). In 1995, PA-DOT transferred the lease from BMR to the East Penn Railway (EPRY). In 1997, the assets of EPRY were purchased by Emons Transportation and reorganized as Penn Eastern Rail Lines, Inc. (PRL).

At the expiration of PRL's operating lease in 2001, PA-DOT determined that it no longer wished to own the Line and it was sold to Berks County. PRL continued to lease and operate the Line until 2003 when Berks County sold the Line to PRL. In August 2007, PRL merged with EPRY to form ESPN.

ESPN states that the Line begins at milepost 0.0 at Pottstown and extends generally in a northerly direction to the end of the Line at milepost 8.6 at Boyertown. At the south end, the Line leaves a light industrial/residential area and extends northwesterly for several miles through a wooded area along a hillside that parallels Manatawny Creek. After gradually descending to level ground, the Line extends through a combination of rural and wooded areas interspersed with occasional small businesses and small towns. Near Boyertown, the Line extends through commercial and industrial areas. The rail yard in Boyertown is located one block from the Town's main street. The Line continues for an additional mile through a commercial and old heavy industrial area, now mostly light industrial or vacant.

ESPN states that there are eleven (11) bridges on the Line and that all appear to be 50 year old or older. ESPN also states that it is in possession of some engineering documents regarding the maintenance or repair of the bridges. If approved, ESPN states that it intends to salvage the rail, track material, and crossties while leaving the bridges, culverts, and ballast in places while it explores rail-banking the Line.

ESPN has provided the historic report to the Pennsylvania Historical and Museum Commission, Bureau of Historic Preservation (SHPO), pursuant to 49 CFR 1105.8(c). In a letter dated May 22, 2008, the SHPO states that their opinion the Line is not eligible for listing in the National Register of Historic Places. Based on available information, the SHPO has submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment.

On September 9, 2008, Berks County (Berks) filed a protest to the proposed abandonment. In its protest, Berks lays out two arguments for opposing the proposed abandonment. First, Berks argues that it has, among others, identified several potential new rail customers. Next, Berks argues that ESPN failed to disclose that the Line meets at least three of the criteria used to establish National Register Eligibility. Furthermore, Berks states that ESPN has failed to fully describe the impact that the proposed abandonment would have on adjacent historic structures as well as failing to initiate the required review of the eleven railroad structures located on the Line.

In a letter dated September 10, 2008, Berks County filed a letter from The Historical Society of Berks County (HSBC) which states that the Line was historically significant to the County's development. Furthermore, the HSBC states that although on a national level wooden trestle bridges are not uncommon, within Berks County and the immediate surrounding areas they have nearly vanished. The HSBC argues that the two remaining wooden trestle bridges may be the last in Berks County supporting and active rail line.

Here, the SHPO has submitted its opinion that neither the Line itself nor the structures on the Line (which includes the bridges), rise to the level of being historically significant. Berks County and the Historical Society of Berks County suggest otherwise, arguing that two wooden trestle bridges on the Line are now rare in Berks County. Typically, SEA relies on the expertise

of the SHPO, who is charged with administering the provisions of the National Historic Preservation Act and the state historic preservation program. Here, it appears that Berks County and its historical society may be raising the historic importance of this rail Line and the rarity of wooden trestle bridges in Berks County to delay a Board decision in this matter rather than document the Line and the two bridges. SEA specifically requests comments addressing the historic potential of the rail Line and the two wooden trestle bridges during the comment period. For now, SEA will not recommend a historic preservation condition.

In a letter dated August 27, 2008, Montgomery County has filed a Notice of Interim Trail Use for the 2.26 miles of the Line located within its jurisdiction. In a letter dated September 9, 2008, ESPN stated its willingness to negotiate with Montgomery County.

Pursuant to 36 CFR 800.2, SEA conducted a search of the Native American Consultation Database at <http://home.nps.gov/nacd> to identify Federally recognized tribes, which may have ancestral connections to the project area. The database indicated that there are no Federally recognized tribes that may have ancestral connection to the project area.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts. SEA is providing a copy of this EA to the following agencies for review and comment: Pennsylvania Historical and Museum Commission, Bureau of Historic Preservation; The Historical Society of Berks County; Pennsylvania Public Utility Commission; Berks County Conservation District; and the Montgomery County Conservation District.

CONDITIONS

SEA recommends the following conditions be imposed on any decision granting abandonment authority:

- 1. The East Penn Railroad, LLC, shall consult with the Pennsylvania Public Utility Commission prior to commencing any salvage activities regarding its requirement for closing crossings.**
- 2. The East Penn Railroad, LLC, shall consult with the Berks' and Montgomery County Conservation Districts prior to commencement of any salvage activities and shall comply with the reasonable NPDES requirements.**
- 3. The East Penn Railroad, LLC, shall notify the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the single geodetic station marker by NGS.**

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended condition is imposed, abandonment of the line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

If the petition becomes effective, the ESPN states that it intends to salvage the rail, track material, and crossties while leaving the bridges, culverts, and ballast in places while it explores rail-banking the Line.

In a letter dated August 27, 2008, Montgomery County filed a petition for Notice for Interim Trail Use and public use condition between mileposts 0.0 and 2.26.

In a letter dated September 9, 2008, ESPN states that it is willing to negotiate with Montgomery County for issuance of a Notice of Interim Trail Use.

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 245-0230, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-1020X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Troy Brady, the environmental contact for this case, by phone at (202) 245-0301, fax at (202) 245-0454, or e-mail at Troy.Brady@stb.dot.gov.

Date made available to the public: September 29, 2008.

Comment due date: October 29, 2008.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan
Acting Secretary

Attachment