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SERVICE DATE - LATE RELEASE DECEMBER 12, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-491X

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA  
LINES--ABANDONMENT EXEMPTION--IN CAMBRIA COUNTY, PA

Decided: December 10, 1997

By petition filed on August 25, 1997, R.J. Corman Railroad Company/Pennsylvania Lines (RJCP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 9.6-mile line of railroad known as the Blacklick Secondary, extending from milepost 6.4 at Ebensburg Junction to the end of the track at milepost 16, east of Nanty Glo, in Cambria County, PA.<sup>1</sup> The Cambria and Indiana Trail Council (Council) requests issuance of a notice of interim trail use (NITU) and a public use condition. We will grant the petition, subject to labor protective conditions, an environmental condition, and a public use condition, and we will issue a NITU.

BACKGROUND

For much of this century, the Blacklick Secondary was part of the Pennsylvania Railroad Company (PRR) route that served the coalfields of south-central Pennsylvania. The Blacklick Secondary also provided an outlet for the Cambria and Indiana Railroad Company (C&I), a coal-hauling subsidiary of Bethlehem Steel Corporation. In 1968, PRR merged with The New York Central Railroad Company to form the Penn Central Transportation Company (PC). PC subsequently entered bankruptcy, and most of PC's lines--including the Blacklick Secondary--were transferred to Consolidated Rail Corporation (Conrail) on April 1, 1976. Conrail later abandoned the trackage west of the Blacklick Secondary near Nanty Glo in 1982.<sup>2</sup> C&I abandoned its entire line of railroad in 1994,<sup>3</sup> thus depriving Conrail of C&I's interchange business at Ebensburg. Conrail ceased operations on the Blacklick Secondary shortly thereafter.

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<sup>1</sup> Notice of the institution of this exemption proceeding was published in the Federal Register at 62 FR 48131 on September 12, 1997.

<sup>2</sup> See Conrail Abandonment Between Nanty Glo and East Dias, PA, Docket No. AB-167 (Sub-No. 72N) (ICC served Feb. 26, 1982).

<sup>3</sup> See Cambria and Indiana Railroad Company--Abandonment Exemption--In Cambria County, PA, Docket No. AB-240 (Sub-No. 4X) (ICC served Nov. 23, 1994).

In December 1995, RJCP acquired the Blacklick Secondary as part of a purchase of approximately 230 miles of rail line from Conrail.<sup>4</sup> According to RJCP, since the acquisition, no traffic of any kind has moved over the line.<sup>5</sup> RJCP claims that past abandonments in the area have eliminated Ebensburg as an interchange point and the line has become dormant. Abandonment will allow RJCP to salvage the rail and other track material from this otherwise dormant line.

#### 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 the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, by permitting RJCP to avoid the expenses of retaining and maintaining a line that generates no traffic and that is not currently operated, and to apply its assets more productively elsewhere on its rail system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because no shipper will lose access to rail service as a result of the proposed abandonment, we find that regulation is not necessary to protect shippers from an abuse of market power. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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

RJCP 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

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<sup>4</sup> See R.J. Corman Railroad Company/Pennsylvania Lines, Inc.--Acquisition and Operation Exemption--Lines of Consolidated Rail Corporation, STB Finance Docket No. 32838 (STB served Jan. 26, 1996).

<sup>5</sup> RJCP states that the line would have qualified for the 2-year out-of-service class exemption but for the change in ownership from Conrail to RJCP.

the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 30, 1997, which noted: (1) that the National Geodetic Survey (NGS) had identified one geodetic station marker that may be affected by the proposed abandonment; and (2) that the Pennsylvania Historical and Museum Commission (PH&MC) had not made a final determination of the proposed abandonment's effect on historic and archaeological resources. Therefore, SEA preliminarily recommended that the following conditions be imposed: (1) RJCP shall provide NGS at least 90 days' notification before engaging in activities that would disturb or destroy the marker identified in NGS's correspondence of June 4, 1997; and (2) RJCP shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Comments on the EA were due November 26, 1997. In a letter filed September 8, 1997, the PH&MC has concluded that the proposal would have no effect on historic or archaeological resources. Subsequent to its issuance of the EA, SEA has noted that this action by PH&MC completes the section 106 process, and has recommended that the historic preservation condition it previously recommended not be imposed. No other comments were received. Based on SEA's recommendation, as supplemented, which we adopt, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or conservation of energy resources.

The Council requests issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the right-of-way involved in this proceeding. Acquisition of the rail corridor would allow the Council to connect a public park, the "Ghost Town Trail," to a major residential area in accordance with local plans to preserve wildlife habitat and greenspace. The Council submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service in compliance with 49 CFR 1152.29. By letter filed November 13, 1997, RJCP indicated that it was willing to negotiate with the Council.

The criteria for imposing trail use and rail banking have been met. Accordingly, we will accept the trail use request and RJCP's response and issue a NITU. The parties may negotiate an agreement during the 180-period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval is not necessary. If no agreement is reached within 180 days, RJCP may fully abandon the line, provided the conditions imposed in this proceeding are met. 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments--Use of Rights-of-Ways as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails), offers of

financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SEA indicates in its EA that the right-of-way may be suitable for other public use after abandonment. The Council also requests imposition of a 180-day public use condition precluding RJCP from disposing of trail-related structures (e.g., bridges, trestles, culverts and tunnels, but not tracks, ties and signal equipment) on the right-of-way that are suitable for trail use. The Council submits that 180 days is required for it to conduct a title review and begin negotiations with the carrier.

Persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. When the need for both is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609. The Council has met the criteria for imposing a public use condition by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the time period. 49 CFR 1152.28(a)(2). Accordingly, a 180-day public use condition also will be imposed. If a trail use agreement is reached on a portion of the right-of-way, RJCP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser, 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. Therefore, with respect to the public use condition, RJCP is not required to deal exclusively with the Council but may engage in negotiations with other interested persons.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by RJCP of the above-described 9.6-mile rail line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that RJCP shall provide NGS at least 90 days' notification before engaging in activities that would disturb or destroy the marker identified in NGS's correspondence of June 4, 1997; (3) the condition that RJCP leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not track or track materials), for a period of 180 days from the effective date of this decision, to enable any State or local government agency or any other interested person to negotiate the acquisition of the line for public use; and (4) the requirement that RJCP comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below.

2. 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, 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.

3. 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.

4. 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.

5. 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, RJCP may fully abandon the line, provided the conditions imposed in this proceeding are met.

6. An OFA under 49 CFR 1152.27(c)(1)<sup>6</sup> to allow rail service to continue must be received by the railroad and the Board by January 22, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$900 filing fee. See 49 CFR 1002.2(f)(25).

7. OFAs 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.**"

8. Provided no OFA has been received, this exemption will be effective on January 11, 1998. Petitions to stay must be filed by December 22, 1997. Petitions to reopen must be filed by January 2, 1998.

9. Pursuant to the provisions of 49 CFR 1152.29(e)(2), RJCP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RJCP's filing of a notice of consummation by December 12, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

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<sup>6</sup> See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

STB Docket No. AB-491X

Vernon A. Williams  
Secretary

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SERVICE DATE - LATE RELEASE DECEMBER 12, 1997

SURFACE TRANSPORTATION BOARD

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BACKGROUND

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2. 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, 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.

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#### 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 the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, by permitting RJCP to avoid the expenses of retaining and maintaining a line that generates no traffic and that is not currently operated, and to apply its assets more productively elsewhere on its rail system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because no shipper will lose access to rail service as a result of the proposed abandonment, we find that regulation is not necessary to protect shippers from an abuse of market power. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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

RJCP 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

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<sup>4</sup> See R.J. Corman Railroad Company/Pennsylvania Lines, Inc.--Acquisition and Operation Exemption--Lines of Consolidated Rail Corporation, STB Finance Docket No. 32838 (STB served Jan. 26, 1996).

<sup>5</sup> RJCP states that the line would have qualified for the 2-year out-of-service class exemption but for the change in ownership from Conrail to RJCP.

the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 30, 1997, which noted: (1) that the National Geodetic Survey (NGS) had identified one geodetic station marker that may be affected by the proposed abandonment; and (2) that the Pennsylvania Historical and Museum Commission (PH&MC) had not made a final determination of the proposed abandonment's effect on historic and archaeological resources. Therefore, SEA preliminarily recommended that the following conditions be imposed: (1) RJCP shall provide NGS at least 90 days' notification before engaging in activities that would disturb or destroy the marker identified in NGS's correspondence of June 4, 1997; and (2) RJCP shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Comments on the EA were due November 26, 1997. In a letter filed September 8, 1997, the PH&MC has concluded that the proposal would have no effect on historic or archaeological resources. Subsequent to its issuance of the EA, SEA has noted that this action by PH&MC completes the section 106 process, and has recommended that the historic preservation condition it previously recommended not be imposed. No other comments were received. Based on SEA's recommendation, as supplemented, which we adopt, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or conservation of energy resources.

The Council requests issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the right-of-way involved in this proceeding. Acquisition of the rail corridor would allow the Council to connect a public park, the "Ghost Town Trail," to a major residential area in accordance with local plans to preserve wildlife habitat and greenspace. The Council submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service in compliance with 49 CFR 1152.29. By letter filed November 13, 1997, RJCP indicated that it was willing to negotiate with the Council.

The criteria for imposing trail use and rail banking have been met. Accordingly, we will accept the trail use request and RJCP's response and issue a NITU. The parties may negotiate an agreement during the 180-period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval is not necessary. If no agreement is reached within 180 days, RJCP may fully abandon the line, provided the conditions imposed in this proceeding are met. 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments--Use of Rights-of-Ways as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails), offers of

financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SEA indicates in its EA that the right-of-way may be suitable for other public use after abandonment. The Council also requests imposition of a 180-day public use condition precluding RJCP from disposing of trail-related structures (e.g., bridges, trestles, culverts and tunnels, but not tracks, ties and signal equipment) on the right-of-way that are suitable for trail use. The Council submits that 180 days is required for it to conduct a title review and begin negotiations with the carrier.

Persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. When the need for both is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609. The Council has met the criteria for imposing a public use condition by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the time period. 49 CFR 1152.28(a)(2). Accordingly, a 180-day public use condition also will be imposed. If a trail use agreement is reached on a portion of the right-of-way, RJCP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser, 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. Therefore, with respect to the public use condition, RJCP is not required to deal exclusively with the Council but may engage in negotiations with other interested persons.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by RJCP of the above-described 9.6-mile rail line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that RJCP shall provide NGS at least 90 days' notification before engaging in activities that would disturb or destroy the marker identified in NGS's correspondence of June 4, 1997; (3) the condition that RJCP leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not track or track materials), for a period of 180 days from the effective date of this decision, to enable any State or local government agency or any other interested person to negotiate the acquisition of the line for public use; and (4) the requirement that RJCP comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below.

2. 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, 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.

3. 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.

4. 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.

5. 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, RJCP may fully abandon the line, provided the conditions imposed in this proceeding are met.

6. An OFA under 49 CFR 1152.27(c)(1)<sup>6</sup> to allow rail service to continue must be received by the railroad and the Board by January 22, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$900 filing fee. See 49 CFR 1002.2(f)(25).

7. OFAs 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.**"

8. Provided no OFA has been received, this exemption will be effective on January 11, 1998. Petitions to stay must be filed by December 22, 1997. Petitions to reopen must be filed by January 2, 1998.

9. Pursuant to the provisions of 49 CFR 1152.29(e)(2), RJCP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RJCP's filing of a notice of consummation by December 12, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

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<sup>6</sup> See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

STB Docket No. AB-491X

Vernon A. Williams  
Secretary