

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1176X)

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

Decided: March 20, 1997

BACKGROUND

By decision served February 19, 1997, the Board granted a petition filed by Consolidated Rail Corporation (Conrail) for 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 of the two tracks is 1.80 miles. The grant was made subject to standard labor protective conditions. The decision provided that the exemption would become effective on March 21, 1997.

On March 6, 1997, the Maryland Mass Transit Administration (MTA) filed a petition asking the Board to reopen the proceeding and to stay its prior decision.¹ Conrail filed a reply on March 12, 1997. The request to reopen will be denied and, thus, the request to stay becomes moot.

MTA contends that its request to reopen is based upon new evidence and substantially changed circumstances that directly affect the basis of the Board's decision. The changed circumstances, MTA states, are the apparent resolution of certain issues by the parties in other matters pending before the Board, i.e., the proposed actions of CSX Corporation and CSX Transportation, Inc. (collectively, CSX) to acquire control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS) to acquire control of Conrail. MTA cites published reports indicating that the respective railroads involved in the merger actions have agreed that all rail lines operated by Conrail and located on Maryland's Eastern Shore will be purchased by and/or conveyed to NS for its operations. The lines on the Eastern Shore specifically include those proposed for abandonment here by Conrail, according to MTA.

MTA asserts that the assumption of the operation of Eastern Shore rail lines by NS amounts to substantially changed circumstances. According to MTA, as a predominant long-haul

¹ MTA also filed a petition on March 11, 1997, requesting issuance of a public use condition as well as an interim trail use condition on the Mardella Industrial Track and the Mill Street Industrial Track. A decision addressing those requests will be issued at a later date.

carrier for the shippers involved, NS "may well find the carload shipments are economically viable and warrant continuation of service on the line." MTA believes that NS should be given the opportunity to evaluate the viability of the line before the Board permits its abandonment.

In reply, Conrail contends that MTA's petition is based upon pure speculation as to events well into the future that may or may not come to pass: specifically, MTA's assertion that NS may want to provide service to shippers on the line should it purchase the line from CSX upon consummation of the CSX/Conrail merger. According to Conrail, MTA's speculation is based merely upon its observation that NS would be a long-haul carrier with respect to traffic on the line, and that its economics with respect to such traffic may be different than Conrail's. Conrail asserts that, even assuming the line is conveyed to NS, there is no evidence or information available at this time regarding the position that NS likely would take with respect to continued rail service on the line. That NS would want to preserve service on the line is no more probable (and more likely less probable) than its concurrence with the abandonment of the line, according to Conrail.

DISCUSSION AND CONCLUSIONS

A petition to reopen must be supported by a showing of material error, new evidence, or substantially changed circumstances. 49 CFR 1152.25(e)(6). (See also former 49 U.S.C. 10327 and section 722(c) of the ICCTA.) Petitioner has not made the required showing here.

The fact that Conrail, CSX, and NS may have resolved certain issues in their merger talks does not amount to the type of "changed circumstances" warranting reopening of our prior decision in this matter. Such information simply does not affect the basic facts of this case. It is clear that Conrail should not be required to continue operating the line at a loss, and whether NS would be willing or able to operate it more profitably in the future is unknown at this time and far too speculative. We simply have no grounds to delay abandonment of a line that is clearly losing money on the basis of one or more merger applications that have not yet been filed.

Moreover, MTA also has not shown material error on our part or presented new evidence that would warrant reopening here. Thus, we have no grounds for reopening our prior decision and will not do so.

MTA seeks a stay here in order to allow the Board to have an opportunity to consider its petition to reopen before the abandonment becomes final. Our action here in ruling on the petition to reopen moots the stay request and it need not be discussed further.

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

It is ordered:

1. The petition to reopen is denied and the petition to stay is moot.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary