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SERVICE DATE – JANUARY 11, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1185X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—
IN MERCER COUNTY, N.J.

Decided: January 10, 2011

Consolidated Rail Corporation (Conrail) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a portion of a line of railroad known as the Robbinsville Industrial Track extending between milepost 32.20± and milepost 37.90± in the cities of Hamilton Township and Washington Township, Mercer County, N.J., a distance of approximately 5.7 miles. Notice of the exemption was served and published in the Federal Register on July 3, 2006 (71 Fed. Reg. 37,976-77). The exemption was scheduled to become effective on August 2, 2006. On July 13, 2006, a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed, which automatically stayed the effective date of the exemption until August 12, 2006.

In a decision served on August 10, 2006, the Board imposed a 180-day public use condition, 2 environmental conditions, and an historic preservation condition. Under the historic preservation condition, Conrail was directed to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (National Register) (generally, 50 years old or older) until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA).

The due date for OFAs was subsequently extended to February 5, 2007. When no OFAs were filed, in a decision served on February 14, 2007, the Board made the exemption effective, terminated the OFA process, and recommenced the 180-day public use negotiating period.¹ The public use condition has since expired, but the abandonment exemption remains subject to the historic preservation condition and 2 environmental conditions.

By decision served on October 28, 2008, the historic preservation condition previously imposed in the August 10, 2006 decision was replaced with a new condition. That condition allowed Conrail to proceed with salvage and the New Jersey Department of Transportation (NJDOT) to proceed with construction activities within the Route 33 Bridge Replacement Project Area (located at milepost 34.05, plus a few hundred feet on either side) in accordance

¹ The February 14, 2007 Board decision describes in detail the background of this proceeding.

with plans submitted by the NJDOT to the New Jersey State Historic Preservation Office (SHPO), while ensuring that Section 106 consultations continued for the remaining segments of the line.

By letter dated November 19, 2010, the SHPO informed the Board's Office of Environmental Analysis (OEA) that the SHPO has been in consultation with Conrail on the proposed abandonment and that they have reached an agreement in principal on the terms of a Memorandum of Agreement (MOA) for the project. The SHPO also informed OEA that, while the MOA is being finalized, Conrail can proceed with the further removal of rail along the line, except for one small section of track located in the historic district of Windsor. More specifically, the SHPO has agreed that Conrail can salvage track between milepost 32.20 and milepost 37.90, with the exception of the track between milepost 37.23 and milepost 37.33 within the Windsor Historic District.

Based upon the recent information provided, OEA recommends that the current Section 106 condition be modified to allow Conrail to salvage track on the line as specified above. Thus, OEA recommends that the Board replace the current historic preservation condition with a new condition that reads: Conrail shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures (including tracks and ties) within the project right-of-way that are eligible for listing or listed in the National Register (generally, 50 years old or older) until completion of the Section 106 process of the NHPA. Conrail may, however, proceed with salvage to allow the NJDOT to proceed with construction activities within the Route 33 Bridge Replacement Project Area (located at milepost 34.05, plus a few hundred feet on either side) in accordance with plans submitted by the NJDOT to the SHPO, and as discussed in a September 30, 2008 letter from the SHPO to the Board. Additionally, as agreed to by the SHPO, Conrail may salvage the rail between milepost 32.20 and milepost 37.90, with the exception of the track located between milepost 37.23 and milepost 37.33 within the Windsor Historic District. Conrail shall report back to OEA regarding any further consultations it has with the SHPO and any other Section 106 consulting parties for the remaining segments of the project right-of-way for which the Section 106 process has yet to be completed.

Accordingly, this proceeding will be reopened and the Section 106 condition will be modified as recommended by OEA.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the historic preservation condition previously imposed in the Board's decision served October 28, 2008, is replaced with the condition that: Conrail shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures (including tracks and ties) within the project right-of-way that are eligible for listing or listed in the National Register (generally, 50 years old or older) until completion of the

Section 106 process of the NHPA. Conrail may, however, proceed with salvage to allow the NJDOT to proceed with construction activities within the Route 33 Bridge Replacement Project Area (located at milepost 34.05, plus a few hundred feet on either side) in accordance with plans submitted by the NJDOT to the SHPO, and as discussed in a September 30, 2008 letter from the SHPO to the Board. Additionally, as agreed to by the SHPO, Conrail may salvage the rail between milepost 32.20 and milepost 37.90, with the exception of the track located between milepost 37.23 and milepost 37.33 within the Windsor Historic District. Conrail shall report back to OEA regarding any further consultations it has with the SHPO and any other Section 106 consulting parties for the remaining segments of the project right-of-way for which the Section 106 process has yet to be completed.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.