

SURFACE TRANSPORTATION BOARD

DECISION

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

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—
IN MERCER COUNTY, NJ

Decided: October 20, 2006

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a portion of a line of railroad known as the Robbinsville Industrial Track, between milepost 32.20± and milepost 37.90± in the cities of Hamilton Township and Washington Township, Mercer County, NJ, a distance of 5.7 miles±. Notice of the exemption was served and published in the Federal Register on July 3, 2006 (71 FR 37976-77). The exemption was scheduled to become effective on August 2, 2006. However, 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 CFR 1152.27(c)(2) was filed by James Riffin to purchase the entire line. This filing automatically stayed the effective date of the exemption until August 12, 2006. Mr. Riffin simultaneously requested that Conrail provide him with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs in this proceeding were due by August 2, 2006 (30 days after publication of notice of the exemption in the Federal Register). However, as of that date, the Board had no record of receiving either an OFA or a request to toll the time period for filing an OFA from either Mr. Riffin or Conrail.

On June 19, 2006, C&A Trail Conservancy (C&A) filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with Conrail for acquisition of the right-of-way for use as a recreational trail. C&A requested that Conrail be prohibited from disposing of the corridor other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that Conrail be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective of the abandonment exemption.

On August 3, 2006, Conrail informed the Board that it declined to negotiate with C&A for interim trail use and, in the absence of Conrail's consent, the Board could not issue a NITU. By decision served August 10, 2006, the Board therefore denied C&A's request for a NITU, but imposed a 180-day public use condition under 49 U.S.C. 10905 for the entire line. The exemption was thus made subject to environmental historic preservation, and public use conditions, requiring that Conrail: (1) notify the National Geodetic Survey at least 90 days prior

to beginning salvage activities in order to plan for the possible relocation of geodetic station markers; (2) 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); (3) consult with Washington Township regarding salvaging and abandonment procedures prior to commencement of any salvage activities; and (4) keep intact the right-of-way, including bridges, trestles, culverts and tunnels, if there are any (but not track, ties and signal equipment), for a period of 180 days from the August 12, 2006 effective date of the exemption (until February 8, 2007) to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use.

The Board's Section of Environmental Analysis (SEA) recommends modifications to the August 10, 2006 decision to provide that Conrail is not yet permitted to remove tracks and ties from the line approved for abandonment. SEA reports that discussions with the New Jersey State Historic Preservation Office (SHPO) have indicated that the tracks and ties are contributing elements to both the railroad corridor and the Camden and Amboy and Windsor historic districts, and, therefore, that these structures should not be removed until the completion of the section 106 process. Based on this information, SEA recommends that the public use and the section 106 historic preservation conditions imposed in the August 10, 2006 decision be modified to require that Conrail: (a) keep intact the right-of-way, including bridges, trestles, culverts and tunnels, if there are any, for a period of 180 days from the August 12, 2006 effective date of the exemption (until February 8, 2007) to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use; and (b) 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, and report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties.

On August 18, 2006, Mr. Riffin filed a motion for reconsideration of the decision served August 10, 2006, and a copy of a petition, pursuant to 49 CFR 1152.27(c)(2)(ii)(C), requesting that the time period for filing an OFA be tolled until 90 days after Conrail provides Mr. Riffin with the information required under 49 CFR 1152.27(a). According to Mr. Riffin, and confirmed by DHL Express (DHL), the petition to toll was to be delivered to the Board on July 13, 2006, but according to DHL, the petition was not delivered to the Board until July 19, 2006. Mr. Riffin states that he was unaware that the Board had not ruled on its petition to toll until August 15, 2006, the date that he received the August 10, 2006 decision. As noted, the Board's records do not reflect receipt of Mr. Riffin's petition to toll the filing of an OFA, either before or after issuance of the August 10, 2006 decision.

In his motion, Mr. Riffin states that, on August 9, 2006, Conrail submitted some, but not all, of the information requested. On August 18, 2006, Mr. Riffin requested that Conrail provide

him with additional information. Mr. Riffin further maintains that Norfolk Southern Railway Company (NSR) and CSX Transportation, Inc. (CSXT) must obtain discontinuance authority from the Board before Conrail's abandonment authority can be approved. In support of this contention, Mr. Riffin argues that the line that is the subject of this abandonment proceeding appears to be a part of Conrail's Retained Assets, within the North Jersey Shared Assets Area, as a result of the Board's decision in CSX Corp. et al. – Control – Conrail Inc. et al., 3 S.T.B. 196 (1998), through which NSR and CSXT obtained Board authority to control Conrail and to operate over certain of Conrail's lines.

In a response filed on September 13, 2006, Conrail indicated that it takes no position on whether the Board should reopen the August 10, 2006 decision, but urges that, if the proceeding is reopened, the Board limit the time period for Mr. Riffin to file his OFA to 10 days after Conrail notifies the Board that it has provided the additional information to Mr. Riffin as required by 49 U.S.C. 10904(b) and the Board's rules at 49 CFR 1152.27(a)(3). On September 19, 2006, Conrail notified the Board that it was providing the available additional information to Mr. Riffin.

In its September 13, 2006 response, Conrail also asserted, in response to Mr. Riffin's position that CSXT and NSR need to obtain discontinuance authority before Conrail would be able to abandon this line, that it has not acted as an agent for CSXT and NSR in providing any common carrier service over this line as there has not been a demand for service (or any new service provided) over the line since the 1999 "split date" when CSXT and NSR took over many of the Conrail operations. Thus, Conrail maintains that CSXT and NSR have not provided common carrier service over the line that would require them to seek discontinuance authority.

Because Mr. Riffin has presented evidence of his timely filing of a petition to toll the due date for filing an OFA and because Conrail does not object to reopening to permit Mr. Riffin to file an OFA, the proceeding will be reopened and the deadline will be tolled pursuant to 49 CFR 1152.27(c)(2)(ii)(C). The deadline will not, however, be tolled for 90 days from the date of receipt of the information sought by Mr. Riffin. The record indicates that Conrail has provided information sufficient for Mr. Riffin to formulate an OFA. Accordingly, an OFA will be due by October 30, 2006. As a result, the effective date of the exemption will be extended until November 9, 2006.

Mr. Riffin's request for a finding that NSR and CSXT require discontinuance authority will be denied. There is no indication that either of those carriers began service over these lines or that Conrail provided any service over the line either on their behalf or on its own behalf since the "split date" in 1999.

In light of the reinstatement of the OFA process in this decision, the remainder of the 180-day public use condition period will be tolled until completion of the OFA process.

As conditioned, 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. The public use condition and the historic preservation condition imposed in the decision served on August 10, 2006, are modified to require that Conrail: (a) keep intact the right-of-way, including bridges, trestles, culverts and tunnels, if there are any, for a period of 180 days from the effective date of the exemption to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use; and (b) 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 NHPA and report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties.¹
3. Mr. Riffin's August 18, 2006 request for reconsideration of the August 10, 2006 decision is granted to the extent he sought reopening to allow for tolling of the OFA due date and denied to the extent he sought a finding that CSXT and NSR need discontinuance authority as to the line involved in this proceeding.
4. The time period for Mr. Riffin to file an OFA is tolled until October 30, 2006.
5. The effective date of the exemption is postponed until November 9, 2006.
6. The running of the public use condition will be tolled pending completion of the OFA process.

¹ As noted in the August 10, 2006 decision, Conrail may not file its consummation notice or initiate any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.

7. If the OFA process terminates, without an OFA sale or subsidy, a decision effective on its service date will be issued to resume the running of the public use condition.²

8. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² Because section 10905 permits a maximum of 180 days from the effective date of the exemption for a public use condition, if the OFA process is terminated, the time remaining for any interested party to negotiate with Conrail for acquisition of the right-of-way for public use will be addressed at that time.