

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35239

ALLEGHENY VALLEY RAILROAD COMPANY—PETITION  
FOR DECLARATORY ORDER

Digest:<sup>1</sup> After reviewing new evidence, the Board is vacating and reversing its prior decision that found the Allegheny Valley Railroad Company possesses an active railroad easement on property owned by The Buncher Company in Pittsburgh, Pa. The record, as supplemented, supports the conclusion that this portion of railroad line was abandoned pursuant to authority granted by the Board's predecessor agency in 1984.

Decided: April 18, 2013

This dispute between the Allegheny Valley Railroad Company (AVRC) and The Buncher Company (Buncher) centers on whether an alleged line of railroad that crossed Buncher's property between 16th Street and 21st Street in Pittsburgh, Pa. (known as the Valley Industrial Track), over which AVRC purportedly obtained an operating easement in 1995, had already been abandoned. The case involves the interpretation of a rail line abandonment authorized by the Board's predecessor agency, the Interstate Commerce Commission (ICC), in the 1980s and events that took place in Pittsburgh after that time. Questions involving the precise description of the line sought to be abandoned and whether particular abandonment authority was exercised (*i.e.*, consummated) are complex, fact-bound determinations that depend on a weighing of all the available evidence, including the evidence regarding the carrier's intent.<sup>2</sup>

As discussed below, based on the record submitted at that time, the Board issued a decision in June 2010 finding that the rail easement across Buncher's property was never

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Abandonment authority is permissive, and an abandonment authorized by this agency must be consummated before a line is fully abandoned and the property is removed from the national rail transportation system. The agency currently requires railroads to file a notice of consummation under 49 C.F.R. § 1152.29(e)(2) to signify that a line has been abandoned, but that regulation was not in effect when the events at issue here took place. Accordingly, in this case the Board must examine whether the carrier's actions show an intent to consummate the abandonment authority.

abandoned. Since that decision was issued, however, Buncher has submitted new evidence that compels the Board to reconsider its conclusion that the rail operating easement is active, primarily because the names and descriptions used in various other essentially contemporaneous abandonments in the vicinity (all involving Smallman Street) strongly suggest that the Valley Industrial Track was abandoned before AVRC acquired the property at issue.

This information, as well as other evidence relevant to this matter that Board staff located following extensive research of archived records,<sup>3</sup> provides a far more complete record of the relevant facts. After carefully considering all of the available evidence, we will vacate and reverse the Board's prior decision. As discussed below, the weight of the evidence shows that the Board erred in finding an active railroad easement over Buncher's property.

## BACKGROUND

### A. The Parties and their Initial Arguments

On April 23, 2009, AVRC filed a petition for declaratory order seeking a ruling from the Board under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 that a rail easement that ran along Railroad Street between 16th Street and 21st Street in Pittsburgh, Pa. (the Valley Industrial Track) remained available for use as a line of railroad. Buncher, a landowner whose property is crossed by the alleged line, objected to the AVRC claim.

Consolidated Rail Corporation (Conrail) sold a parcel of land to Buncher in July 1983. The alleged line in question crossed this parcel of land, and Conrail, as part of the 1983 transaction, retained an easement in its sale to Buncher for continued rail service along the line.<sup>4</sup>

AVRC acquired a number of assets from Conrail in 1995, but Buncher claimed that the rail easement across its property was not one of them because the line had already been abandoned. Buncher pointed out that Conrail had submitted an abandonment application in Docket No. AB 167 (Sub-No. 558N),<sup>5</sup> filed on February 9, 1984, and authorized on May 18, 1984 (hereinafter referred to as the February 1984 VIT Abandonment), which sought to abandon the "Valley Industrial Track" from its connection with the Fort Wayne Connecting Track in Pittsburgh, Pa. (approximately milepost 0.0) to the west side of 21st Street (approximately

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<sup>3</sup> The evidence to which we refer consists of filings in prior proceedings before the ICC and written agency decisions. The documents are attached in Appendices to this decision and are made part of the record in this proceeding.

<sup>4</sup> See Buncher's Reply, Exh. D, June 2, 2009.

<sup>5</sup> Further references to abandonment proceedings in this decision omit the full docket number and refer only to the number of the relevant sub docket. The sub dockets containing the letter "N" were filed under the Northeast Rail Service Act of 1981 (NERSA), which provided a window (ending in 1985) during which Conrail could qualify for streamlined abandonment procedures for its lines by first filing a Notice of Insufficient Revenue (or NIR) for each such line to be abandoned.

milepost 0.66) in Allegheny County, Pa.<sup>6</sup> Buncher asserted that, by the late 1980's, the track had been removed and the area paved over without objection from Conrail. According to Buncher, because the abandonment was therefore consummated, Conrail had no easement to convey to AVRC.

Once Buncher raised the filing of the February 1984 VIT Abandonment, AVRC relied heavily on the argument that the line involved in that abandonment was on Smallman Street, and not on Buncher's land, based on the premise that there were two "Valley Industrial Tracks." AVRC also argued that, even if that abandonment did cover the Valley Industrial Track on Buncher's property, Conrail never consummated the abandonment, and still retained a railroad easement to pass on to AVRC in 1995.

Additionally, Buncher argued that the Board lacked jurisdiction over the case because a proper analysis required an interpretation of the Final System Plan (FSP), which had conveyed the area rail property to Conrail.<sup>7</sup> Buncher contended that, according to a recent decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in Consolidated Rail Corp. v. STB, 571 F.3d 13 (D.C. Cir. 2009) (Harsimus), matters requiring an interpretation of the FSP must be handled by the successor to the Special Court established in the 3 R Act, the U.S. District Court for the District of Columbia (U.S. District Court). Alternatively, Buncher argued that the tracks running across the property between 16th and 21st Streets were excepted spur track that could be abandoned at the carrier's discretion pursuant to 49 U.S.C. § 10906. AVRC countered that Harsimus is inapplicable here and that the Board should resolve the case.

#### B. The Board's June 15, 2010 Decision

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<sup>6</sup> The application followed a Conrail NIR filed in September 1983, as discussed further below. Buncher later explained that "the portion of the Valley Industrial Track between milepost 0.0 and milepost 0.66 generated no revenues or expenses at that time. It was no longer being used." Buncher's Reply n. 10, June 2, 2009.

<sup>7</sup> In response to the bankruptcy of several midwestern and northeastern railroad companies, Congress enacted the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974). 44 U.S.C. §§ 701-719 (3 R Act). Pursuant to that Act, the United States Railway Association developed the FSP to designate which lines would be retained in active service (and consequently transferred to Conrail, a government-created successor railroad to the various railroads in reorganization) and which would be allowed to be abandoned. To administer the restructuring, the 3 R Act created a Special Court, which subsequently ordered the conveyance of the property by recorded deed. Lines so transferred that remained in the national rail system for at least two years would become subject to the ICC's abandonment authority. 45 U.S.C. § 744(g). The FSP was submitted to Congress on July 26, 1975, and approved in § 601(e) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 127 (1976).

In its June 15, 2010 decision, the Board granted AVRC's request that it issue a declaratory order to clarify the situation. The Board determined that, at the time of the February 1984 VIT Abandonment, there were likely two different lines referred to as the "Valley Industrial Track" – one running along Railroad Street and extending west from where Railroad Street ended (crossing Buncher's property) on the north side of the Produce Terminal located there, and a second one running along Smallman Street to the south of the Produce Terminal. This finding was largely based on an early 20th century map created by one of Conrail's predecessors, the Pennsylvania Railroad (PRR), and a verified statement provided by the president of AVRC, which purportedly traced the area's rail history since the 1850s.

Specifically, based on the information then available, the Board found that the February 1984 VIT Abandonment referring to the "Valley Industrial Track" covered a portion of the line running along Smallman Street, rather than the line that had run across the Buncher property and thus the February 1984 VIT Abandonment was not relevant to this dispute.<sup>8</sup> The Board also noted that when Conrail sold various rail assets in the area to AVRC in 1995, Conrail explicitly included in its quitclaim deed easement language covering the track segment in question. The Board determined that the quitclaim deed language suggested that Conrail believed it had retained a rail easement to convey.

In sum, the Board concluded, based on the evidence available at that time, that there had been a line of railroad crossing Buncher's property and that an active railroad easement over Buncher's property survived the February 1984 VIT Abandonment.

### C. The Appeal

Buncher appealed the Board's decision to the D.C. Circuit. In a Motion to Adduce Additional Evidence Pursuant to 28 U.S.C. § 2347(c) (Motion to Adduce) that was part of Buncher's appeal, Buncher submitted new evidence that it argued would affect the Board's decision. According to Buncher, that additional evidence established that, in mid-1984, Conrail filed three abandonment applications related to the line along Smallman Street, south of the

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<sup>8</sup> It used to be possible to cross the Fort Wayne Bridge (Bridge) at 11th Street by moving west along both the Railroad Street line and the Smallman Street line. When the June 2010 decision was issued, the Board believed that it was only possible to connect to the Bridge along the Smallman Street line in 1984, because the Railroad Street line apparently had its connection to the Bridge severed in 1972 when the ICC authorized the Penn Central Transportation Co. trustees (Penn Central Trustees) to abandon the 0.2-mile portion of the Allegheny Branch, together with associated side tracks, between 12th Street and 14th Street. See Trustees of the Property of Penn Central Transp. Aban. Portion of its Allegheny Branch, Pittsburgh, Allegheny Cnty., Pa., FD 26942 (ICC served Mar. 13, 1972) (1972 Abandonment). Accordingly, in 2010, the 1972 Abandonment seemed to dictate that only the line along Smallman Street fit the line described in the February 1984 VIT Abandonment. As discussed below, however, additional information concerning the 1972 Abandonment indicates that either a line along Smallman Street or Railroad Street met that description. The additional information also raises the question of whether that 1972 Abandonment authority was ever consummated.

Produce Terminal—two filed in May 1984 (Sub-Nos. 571N and 572N) and one filed in June 1984 (Sub-No. 641N). Thus, Buncher claimed, a total of four distinct abandonment applications were filed in 1984 that were directly relevant to the AVRC declaratory order petition: Sub-No. 558N (referring to the “Valley Industrial Track”); and Sub-Nos. 571N, 572N, and 641N (all referring to “Smallman Street”).

The Board filed a motion for voluntary remand with the court after determining that the new Buncher evidence could be material to both the June 2010 decision and the proceedings on appeal. After some initial resistance, Buncher joined the other parties in seeking a voluntary remand of the matter to the Board.

The court remanded the case to the Board in an order issued on January 26, 2011. Buncher submitted its additional evidence in an opening brief filed with the Board on April 11, 2011, AVRC filed a reply on May 11, 2011, and Buncher filed a rebuttal on May 26, 2011. In addition, as explained further below, Board’s staff search of records at the agency and at the National Archives at College Park, Md., produced more documents relating to various abandonment filings in the 1970s and 1980s that are also relevant to the matter before us.

#### D. The Parties’ Arguments and Evidence on Remand

As an initial matter, Buncher renews its Harsimus claim that the Board lacks jurisdiction to resolve the case. Buncher also presents the additional evidence that led to the Board’s request for voluntary remand—two May 1984 abandonment applications and one June 1984 abandonment application, in which Conrail sought authority to abandon track along specified portions of Smallman Street (referred to hereinafter as the Smallman Abandonments).<sup>9</sup>

Buncher argues that, because the Smallman Abandonments specifically refer to portions of the line along Smallman Street, the February 1984 VIT Abandonment could not have also covered a line in roughly the same area along Smallman Street. Moreover, because the Smallman Abandonments do not refer to the Smallman Street line as the “Valley Industrial Track,” Buncher argues that there is and was actually only one Valley Industrial Track—extending along Railroad Street to the north of the Produce Terminal—and that the line crossing the Buncher property must have been the subject of the February 1984 VIT Abandonment.

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<sup>9</sup> See Sub-No. 572N (application filed May 23, 1984, and attached as Exhibit A to Buncher’s April 11, 2011 Opening Evidence) where Conrail sought authority to abandon the Smallman Street Track from a point near milepost 0.0 east of 11th Street to a point near milepost 0.3 east of 14th Street; Sub-No. 571N (application filed May 23, 1984, and attached as Exhibit B to Buncher’s April 11, 2011 Opening Evidence) where Conrail sought authority to abandon the Smallman Street Track from a point at approximately milepost 0.71 south of 22nd Street to a point at approximately milepost 1.3 south of 29th Street; and Sub-No. 641N (application filed June 8, 1984, and attached as Exhibit C to Buncher’s April 11, 2011 Opening Evidence) where Conrail sought authority to abandon the Smallman Street Branch from a point east of 14th Street at approximately milepost 0.3 to a point east of 24th Street at approximately milepost 0.85. Each of these abandonments was granted in the Autumn of 1984.

Buncher concludes that this abandonment has long since been consummated (because, among other things, the track was removed and the entire area paved and graded for non-rail use more than 20 years ago without objection from Conrail), and that, accordingly, there is no active railroad easement across its property today. Buncher also notes that, even if the 1972 Abandonment discussed by the Board in its original decision covered the Valley Industrial Track, the February 1984 VIT Abandonment could nevertheless have covered a part of the same track to ensure “closure, completeness, and avoidance of ‘gaps and gores’ in description or recitals.”<sup>10</sup>

In reply, AVRC offers its own analysis of the Smallman Abandonments and how they relate to the February 1984 VIT Abandonment of the “Valley Industrial Track.” AVRC presents a new witness, Gerhard M. Williams, Jr., formerly Conrail’s Assistant Vice President for Regional Market Development, and additional testimony from Russell A. Peterson, the Chief Executive Officer of AVRC. In his verified statement, Williams describes his involvement in the activities leading up to the Conrail filing of the Smallman Abandonments. Citing the Williams statement, AVRC argues that the February 1984 VIT Abandonment and the Smallman Abandonments all referred to a line along Smallman Street. According to AVRC (and Williams), Conrail filed, but did not consummate, the February 1984 VIT Abandonment because of concerns raised by the then Mayor of Pittsburgh, Produce Terminal shippers, and other governmental officials about cutting off rail access to the Produce Terminal. Williams asserts that Conrail accepted a compromise whereby it agreed to “reactivate” the Valley Industrial Track north of the Produce Terminal Building situated between Railroad and Smallman Streets, actually provided service over that reactivated line (AVRC and Williams include a Conrail map purportedly showing the reactivated line), and then refiled for authority to abandon the line along Smallman Street through the three Smallman Abandonments. Based on this testimony, AVRC asserts that the reactivated line corresponds to the railroad easement that the Board found to be active in the June 2010 decision and that the easement crosses Buncher’s property.

On rebuttal, Buncher responds to Williams’ verified statement by noting that a 1993 Conrail map shows the reactivated line as being a different line than the Valley Industrial Track, and argues that Williams’ statement is based, in part, on erroneously placing the line asserted to be the reactivated line on the Buncher parcel. Buncher also observes that the February 7, 1984 letter from Conrail to the Mayor<sup>11</sup> promises to delay filing for abandonment authority for the Smallman Street line, despite Conrail filing an abandonment application for the Valley Industrial Track two days later, or February 9, 1984—suggesting that the Smallman Abandonments and February 1984 VIT Abandonment covered different lines.

#### E. Additional Evidence

Given the discrepancies between the original evidence submitted by the parties and the new evidence that the parties presented to the Board only after the June 2010 decision, the Board

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<sup>10</sup> Buncher’s Opening Brief 34, Apr. 11, 2011.

<sup>11</sup> See AVRC’s Reply, Exh. E, May 11, 2011.

also conducted its own research. Board staff combed through agency records and found a Notice of Insufficient Revenue underlying the February 1984 VIT Abandonment filed in September 1983.<sup>12</sup> The research also produced a separate NIR for one of the Smallman Abandonments, Sub-No. 641N, filed October 31, 1983<sup>13</sup> (and which ultimately led to the June 1984 Smallman Abandonment application in that docket); shipper and government representative letters from December 1983 and early 1984 protesting the Sub-No. 641N abandonment; and reply letters from the ICC.<sup>14</sup> Finally, after a search of records in the National Archives, staff found the complete 1972 Abandonment application with a color map,<sup>15</sup> as well as two subsequent decisions from the ICC extending the consummation deadline for the 1972 Abandonment into 1975.<sup>16</sup> As discussed below, this information, which stems from the evidence submitted on remand and a search of information from the National Archives, provides further support for Buncher’s position that there is no longer an active rail easement across Buncher’s property. We have made all of this information part of the record in this proceeding.

### PRELIMINARY MATTERS

The Board sought a voluntary remand and then reinitiated this proceeding after reviewing evidence attached to the Motion to Adduce that Buncher had filed with the D.C. Circuit. Before we readdress the merits taking into account this evidence, we will explain our decision to treat the Motion to Adduce as a petition to reopen and reconsider our June 2010 decision, and why we have the jurisdiction to determine the merits of this dispute.

The Motion to Adduce was the functional equivalent of a petition to reopen based on new evidence. Under our statute, we may reopen a proceeding because of material error, new evidence, or substantially changed circumstances.<sup>17</sup> The alleged grounds for reopening must be sufficient to convince us that, if accepted, they would lead the Board to materially alter its prior decision.<sup>18</sup> The agency’s practice is to only accept “new” evidence as opposed to “newly discovered” evidence when reconsidering a decision. See Tongue River R.R.—Constr. and Operation—W. Alignment, FD 30186 (Sub-No. 3), slip op. at 13 (STB served June 15, 2011)

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<sup>12</sup> See Appendix A.

<sup>13</sup> See Appendix B.

<sup>14</sup> See Appendix C.

<sup>15</sup> We have attached a compressed version of the map at Appendix D.

<sup>16</sup> A search of internal agency records revealed an index card indicating that the ICC further extended the deadline into 1977. The earlier extensions and index card are attached at Appendix E.

<sup>17</sup> 49 U.S.C. § 722(c); 49 C.F.R. § 1115.3; see also CSX Corp.—Control—Conrail, 3 S.T.B. 764, 770 (1998). We are also authorized to “modify [our] findings of fact, or make new findings ... and may modify or set aside [our] order” so that we may analyze new evidence. 28 U.S.C. § 2347(c).

<sup>18</sup> E.g., Montezuma Grain v. STB, 339 F.3d 535, 542 (7th Cir. 2003).

(citing Friends of Sierra R.R. v. ICC, 881 F.2d 663, 667 (9th Cir. 1989)). Here, we find it appropriate to treat this evidence as new rather than newly discovered. The Board itself sought remand from the D.C. Circuit to consider the evidence that Buncher had presented in its Motion to Adduce, and no party has objected to our consideration of that evidence. Moreover, it is not the type of evidence Buncher should have been expected to know about when it responded to AVRC's petition for declaratory order in 2009.<sup>19</sup> Indeed, some of the evidence upon which the Board now relies was discovered by the Board only after a time-consuming review in the National Archives by Board staff. Given all of these circumstances, we have considered the evidence so as to decide this case with the most complete record possible.

We also find that it is not necessary to interpret the FSP or the conveyance of property to Conrail in the FSP to resolve this dispute. Rather, our analysis here is based solely on our interpretation of relevant abandonment authority issued by the ICC and evidence regarding the parties' actions and events that took place following the issuance of that authority. Accordingly, we agree with AVRC that Harsimus is inapplicable and that we need not refer any matters in this case to the U.S. District Court.

#### DISCUSSION AND CONCLUSIONS

The issue here is whether we should revisit the Board's declaration that there is an active railroad easement running across Buncher's property. This question turns on: (1) whether an active line of railroad extended from Railroad Street across the Buncher property; (2) whether the February 1984 VIT Abandonment refers to the line extending from Railroad Street (as argued by Buncher)<sup>20</sup> or to a parallel line running along Smallman Street (as argued by AVRC); and (3) whether the February 1984 VIT Abandonment was consummated.<sup>21</sup>

As indicated, the passage of decades and the initial record presented have made this a difficult and complex case to resolve. We now have a much more complete record before us than the Board did when it first considered this dispute. As discussed below, the additional evidence provided by Buncher, as supplemented by agency staff research, persuades us that the assumptions that led to the conclusion in the June 2010 decision that there was still an active rail easement across Buncher's property were wrong. Rather, the weight of the evidence now shows that the active line of railroad on the Buncher property has long since been abandoned.

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<sup>19</sup> For the most part, the evidence pertains to other abandonments and events in the vicinity to which Buncher was not a party. Buncher would not have had a basis at the time to search for other abandonments that it had no basis for knowing existed. Nor were the Smallman Abandonments mentioned by AVRC at the oral argument held on this case prior to the June 2010 decision. In this instance, the records indicating existence of the Smallman Abandonments were first discovered by Buncher after it approached a nonparty carrier following the Board's June 2010 decision. Hence, the Board does not consider that, in the unusual circumstances here, such records were effectively available to Buncher prior to issuance of the June 2010 decision.

<sup>20</sup> Assuming an active line ran across the Buncher property.

<sup>21</sup> Assuming the February 1984 VIT Abandonment refers to the Railroad Street line.

Therefore, for the reasons discussed below, we will vacate and reverse the Board's prior decision finding that AVRC's rail easement over Buncher's property remains active.

A. An active line of railroad once crossed the Buncher property.

The record indicates that a line of railroad once crossed Buncher's property on the north side of the Produce Terminal. As explained in the testimony of AVRC's Russell Peterson, the Allegheny Valley Railroad completed building a rail line in 1856 between Pittsburgh and Kittanning, Pa.<sup>22</sup> This line commenced at the terminal at the intersection of 11th Street and Smallman Street (MP 0.0) and crossed north to the Railroad Street alignment and then moved eastward. Presumably, line haul service began to be provided on this line in the late 1850s following its construction. This line became known as part of the Allegheny Branch. In 1900, PRR leased the Allegheny Branch,<sup>23</sup> and the 1919 map of the PRR that AVRC submitted as part of its July 15, 2009 filing clearly shows this line.<sup>24</sup> The description of the Allegheny Branch line is also consistent with the description of the Valley Industrial Track beginning at milepost 0.3 acquired by AVRC in Allegheny Valley Railroad Co.—Acquisition and Operation Exemption—Certain Lines of Consolidated Rail Corp., FD 32783, slip op. at 1 (ICC served Nov. 17, 1995), and a reference to the Valley Industrial Track in the February 1984 VIT Abandonment as “Formerly Allegheny Sec.”).

Generally, the only way a line of railroad can be abandoned is by obtaining and then exercising (*i.e.*, consummating) abandonment authority granted by the Board or its predecessor.<sup>25</sup> Because there is no record of such authority being issued to any of the owners of this line prior to 1984, an active line of railroad crossed the Buncher property at the time of the February 1984 VIT Abandonment.<sup>26</sup>

B. The February 1984 VIT Abandonment covered the active line crossing the Buncher property.

We find, based on our analysis of the new evidence presented by Buncher, that there was only one Valley Industrial Track involved in the abandonments at issue here—the line that

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<sup>22</sup> See AVRC's Reply, V.S. Peterson 2, July 15, 2009.

<sup>23</sup> In 1910, PRR consolidated the Allegheny Valley Railroad into its own corporate structure. AVRC and the Allegheny Valley Railroad are unrelated companies. Subsequently, the Penn Central Transportation Company and Conrail became successor operators of the line.

<sup>24</sup> See AVRC's Reply, Exhibit BB, July 15, 2009.

<sup>25</sup> See Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 490 U.S. 311, 311 (1981); Honey Creek R.R.—Pet. for Declaratory Order, FD 34869, et al., slip op. at 3 (STB served June 4, 2008).

<sup>26</sup> This track is not 49 U.S.C. § 10906 excepted spur track because it was clearly part of a rail line prior to that time. See Atchison, Topeka & Santa Fe R.R.—Aban. Exemption—in Lyon Cnty., Kan., AB 52 (Sub-No. 71X), slip op. at 3 (ICC served June 17, 1991).

crossed the Buncher property and ran along Railroad Street—and that the February 1984 VIT Abandonment pertained only to that single line.

The key support Buncher provides for its position that the line across its property was the only Valley Industrial Track, and was abandoned, are the Smallman Abandonments and their clear differences from the line described as the Valley Industrial Track in the February 1984 VIT Abandonment. Buncher argues that, because the May and June 1984 Smallman Abandonments specifically refer to the line along Smallman Street, the February 1984 VIT Abandonment cannot also have applied to a line in roughly the same area along Smallman Street. Moreover, because the Smallman Abandonments do not refer at any time to the Smallman Street line as the “Valley Industrial Track,” Buncher argues that there is and was actually only one Valley Industrial Track, and that it is on the north side of the Produce Terminal, extending along Railroad Street. Therefore, according to Buncher, the line crossing its property on Railroad Street had to have been the subject of the February 1984 VIT Abandonment in Sub-No. 558N.

Buncher’s reasoning, as well the evidence on which Buncher relies, is persuasive. The February 1984 VIT Abandonment and three Smallman Abandonment applications were drafted and filed within months of each other and were thus contemporaneous. The most reasonable explanation for the differences between the two sets of abandonments is that the preparers of the abandonment applications were referring to different lines when they referred to “Smallman Street” and the “Valley Industrial Track.”

The additional evidence Board staff discovered buttresses our conclusion. The record now reveals that Conrail filed separate and distinct Notices of Insufficient Revenue in Sub-Nos. 558N, 641N, 571N, and 572N in the Fall of 1983. In particular, Conrail filed an NIR for the Sub-No. 558N line (called the “Valley Industrial Track”) between roughly 11th Street and 24th Street in September 1983<sup>27</sup> and about one month later filed a different NIR to abandon a part of the Smallman Street line between a point east of 14th Street and a point east of 24th Street (Sub-No. 641N).<sup>28</sup> After commencing the NERSA abandonment process by filing these NIRs, Conrail filed applications to continue the abandonment process for the various segments. Conrail began by filing the February 1984 VIT Abandonment. Then, it filed two of the Smallman Street applications in May 1984 and a final one in June 1984. Conrail included maps with its various NIRs as well as its subsequent abandonment applications, and these support the conclusion that the applications were for distinct lines.

First, the abandonment and additional evidence descriptions for the Valley Industrial Track and Smallman Street differ in significant ways. The Sub-No. 558N Valley Industrial Track abandonment, filed in the February 1984 VIT Abandonment, describes that line as “Formerly Allegheny Sec. Jct. with Ft. Wayne Conn. Track (approx. M.P. 0.0) to N. Side of 21st Street (approx. M.P. 0.66).” The description of the line in the Smallman Street filing in Sub-No. 641N in June 1984 denotes the “Smallman Street Track, In Pittsburgh E. of 14th Street (approx.

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<sup>27</sup> See Appendix A.

<sup>28</sup> See Appendix B.

M.P. 0.3) to Jct. with Valley Industrial E. of 24th Street (approx. M.P. 0.85).” Neither the October 1983 Notice of Insufficient Revenue filing in Sub-No. 641N for the Smallman Street line nor the subsequent June 1984 abandonment application in Sub-No. 641N makes any reference to the line as also being known as the “Valley Industrial Track,” claims that this Smallman Street line used to be called the “Valley Industrial Track,” or even references the “Valley Industrial Track” at all (other than to describe the Smallman Street line as intersecting *with* the Valley Industrial Track at 24th Street, again suggesting that they are not one and the same). Likewise, neither the September 1983 NIR nor the February 1984 abandonment application for the Valley Industrial Track in Sub-No. 558N suggests that the February 1984 VIT Abandonment pertains to Smallman Street. Furthermore, none of the letters in the record from concerned shippers or government representatives about the proposed Smallman Abandonment in Sub-No. 641N refers to this line as the “Valley Industrial Track.”<sup>29</sup> In addition, the Valley Industrial Track filings do not describe that line as “embedded in the city street.” All three filings for Smallman Street do.

Furthermore, the areas proposed for abandonment in each of the maps submitted with the Notices of Insufficient Revenue and corresponding abandonment applications are labeled and crosshatched with what is to be abandoned, and provide visual confirmation of differences. As can be seen from those maps, each abandonment is separate and distinct. They all employ the same general layout of the lines in the area, in relatively simple format, and in no instance are the crosshatched areas and corresponding mileposts, or their location, the same as in another docket. The line proposed for abandonment in the NIR for Sub-No. 558N, denoted “Valley Industrial Track,” is marked on the north side of where the Produce Terminal should be located. On the other hand, the maps filed in the NIRs and applications for the Smallman Abandonments identify their respective segments to be south of where the Produce Terminal should be located.<sup>30</sup>

Finally, the Notice of Insufficient Revenue for Sub-No. 558N (Valley Industrial Track)<sup>31</sup> stated that there had been no traffic or revenues on that line for over 12 months, but the filings submitted for the Smallman Abandonments at issue in Sub-Nos. 571N and 572N, and Sub-No. 641N all claimed that there was substantial traffic and revenue on the Smallman Street line for the same period. It should also be noted that the September 1983 NIR in Sub-No. 558N described the Valley Industrial Track as being a “Former Overhead Route. No originating or

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<sup>29</sup> See Appendix C.

<sup>30</sup> There is one anomaly in this group of 1980s maps. The September 1983 NIR in Sub-No. 558N for the Valley Industrial Track clearly shows a crosshatched line labeled “Valley Industrial” that would fall on the north side of the Produce Terminal, and also shows the line to the right that is designated as the Smallman Street line in the later abandonments correctly angling in to the line east of the Valley Industrial. However, the actual abandonment map for Sub-No. 558N shows the abandoned portion in the same place, but oddly draws the Smallman Street lines slanting to the right and leading into the main line. This is the only map drawn this way, and it appears to be a mistake, because all of the Smallman Abandonments’ diagrams match up to the one for the Valley Industrial Track NIR.

<sup>31</sup> See Appendix A.

terminating traffic during last 12 months.” As a purely “overhead” line that did not carry traffic originating or terminating on the line, it was likely that the route was not being used to serve the Produce Terminal, and, thus, was not being used for traffic in the same way as the Smallman Street line. If AVRC’s theory were correct, Sub-No. 558N’s traffic patterns would mirror the traffic patterns for Sub-Nos. 641N, 571N, and 572N, but they do not. This, too, indicates that the abandonments refer to different lines rather than the same line.

Nor do the precise mileposts or street designations of the lines in any two of the four different applications line up in a way that would suggest any are duplicative: For example, the Valley Industrial Track abandonment in Sub-No. 558N terminates at 21st Street (which also coincides with the endpoint of the Buncher property), while the Smallman Street October 1983 NIR for the abandonment in Sub-No. 641N runs along Smallman Street from a point east of 14th Street to a point east of 24th Street.<sup>32</sup>

The evidence also undermines AVRC’s position that the Smallman Street line and the Railroad Street line were collectively referred to as the “Valley Industrial Track” based on community, shipper, and governmental involvement at the time. AVRC argues that, although Conrail sought to abandon the line along Smallman Street by filing the Sub-No. 558N Notice of Insufficient Revenue in the Fall of 1983 and then the February 1984 VIT Abandonment application, the carrier simply let that application languish based on pressure that it had received from the City and the community, and later sought to abandon the same line through Sub-Nos. 571N, 572N, and 641N only a few months later with its filings in May and June of 1984.

Conrail documents now in the record, however, show that this interpretation does not track actual events. Specifically, the evidence shows that, in 1983, there was still rail carriage to customers in the Produce Terminal on the *south* side of the Produce Terminal along Smallman Street, and the Smallman Street line was an active line of railroad.<sup>33</sup> The record further indicates that remaining rail traffic had waned after the Urban Redevelopment Authority of Pittsburgh (URA) bought the Produce Terminal, and that by 1983 Conrail wanted to abandon some or all of the Smallman Street line. Conrail also was disposing of and abandoning other property in the area. Shortly after the Smallman Street NIR in Sub-No. 641N was filed in October 1983, the City and several produce companies wrote letters to Conrail expressing concern about Conrail’s possible abandonment of part of the *Smallman Street* line, because abandonment would cut off the only rail line serving the Produce Terminal. Their letters specifically referenced the docket number for that Smallman Abandonment, and not the earlier one for the Valley Industrial Track.<sup>34</sup> This would be logical if, as the record shows, by that point, no traffic was moving over the Valley Industrial Track.

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<sup>32</sup> See Appendix B.

<sup>33</sup> See AVRC’s Reply, Exh. F, May 11, 2011 and Appendix B of this decision. (As noted above, prior to that time the Valley Industrial Track had served overhead traffic.)

<sup>34</sup> On December 7, 1983, the Gullo Produce Company wrote to the Pennsylvania Department of Transportation expressing concern about the NIR in “AB167, Sub. No. 641N.” A similar letter was sent the same day from the Consumers Produce Co., Inc. stating that Conrail

(continued . . .)

AVRC's witness Peterson asserts that, even if the line at issue in Sub-No. 558N was on Buncher's property, that abandonment was essentially dropped so that the Valley Industrial Track could be reactivated as part of a compromise with the City so that Conrail could go forward with abandoning Smallman Street.<sup>35</sup> There is, however, no evidence to support this.

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( . . . continued)

planned to close "the only stretch of track that serves our Terminal." On December 21, 1983, the ICC responded to a congressional inquiry from Rep. Joseph Gaydos about the Sub-No. 641N proceeding. A second similar letter was sent on January 4, 1984, to the United Fresh Fruit and Vegetable Association, referring, again, only to Sub-No. 641N. On January 20, 1984, Pittsburgh Mayor Richard Caliguiri wrote to Stanley Crane, Chairman and CEO of Conrail:

I am greatly distressed that your railroad has initiated the process of abandoning trackage along *Smallman Street* in the City of Pittsburgh. As you know, Conrail recently sold the Urban Redevelopment Authority of Pittsburgh the Wholesale Produce Market . . . .

[emphasis added].

After noting that Conrail had implied that there would be *continued* service, the Mayor added:

The City has received letters of profound concern from rail users along the Smallman Street spur and we cannot allow our new Wholesale Produce Market to lose common carrier rail service. Your staff has indicated informally that they will extend the date of filing for abandonment until March. I formally request that your filing be so delayed and hope that we can use the additional time to favorably resolve this matter.

The City also complained that it had bought the Produce Terminal with a view toward upgrading it and attracting more business, and that abandoning the Smallman Street line would threaten that goal. In internal Conrail memos and a letter to Caliguiri, Conrail indicated that it would meet with the City in February to discuss this further, and would delay any filing on Smallman Street until at least March. The evidence demonstrates that it was the line on the south side of the terminal that the Mayor and vendors did not want abandoned. No mention was made in the correspondence to the September 1983 Valley Industrial Track NIR filing or the track on the north side of the Terminal. This point is further buttressed by the fact that the ultimate filing of the Smallman Abandonment application in Sub-No. 641N was, indeed, delayed, not only beyond March but into June of 1984—and was the last of the three Smallman Street abandonment applications that were filed.

<sup>35</sup> Peterson states at page 9 of his verified statement attached to AVRC's May 11, 2011 Reply: "Even if Conrail's initial abandonment notice for the Valley Industrial Track in AB167 (Sub No. 558N) had included track facilities and right of way between 16th and 21st Street on the north side of the Pittsburgh Produce Terminal, that notice and the authority issued by the ICC on May 14, 1984 were explicitly superseded by Conrail's commitment to the City of Pittsburgh to continue to serve the Pittsburgh Produce Terminal via its northside rail facilities."

Moreover, the May 14, 1984 Conrail memorandum indicates that the line reactivation was being contemplated on land owned by the City rather than on land owned by Buncher.<sup>36</sup>

C. The February 1984 VIT Abandonment was consummated.

For this determination, the Board must examine whether the carrier's actions evidence an intent to consummate the abandonment authority. Our review of the record on remand leads us to conclude that Conrail had no railroad easement interest to convey to AVRC in 1995 because Conrail received authority from the ICC to abandon the Valley Industrial Track in 1984 and also consummated that abandonment.

Although we do not have a letter of consummation,<sup>37</sup> subsequent events that took place in the area combined with carrier inaction support the conclusion that the February 1984 VIT Abandonment was consummated before the 1995 conveyance to AVRC. For instance, the record shows that Buncher pulled up the rails and cordoned off the property using Jersey barriers as early as 1988. Moreover, "[w]ithin a few years after Conrail obtained the abandonment certificate from the ICC," Buncher "filled and graded [its property] for non-railroad use ...."<sup>38</sup> Nothing in the record, however, shows that Conrail objected to Buncher's activities or took any action to show its intent to maintain the Valley Industrial Track as an active line of railroad. Finally, even the map included with Conrail's May 14, 1984 memo describes the portion of the Valley Industrial Track that crosses the Buncher property as abandoned.<sup>39</sup> Given these facts, the most reasonable interpretation is that, notwithstanding the language in the quitclaim deed, Conrail consummated the abandonment of the Valley Industrial Track before the alleged 1995 conveyance of the railroad easement to AVRC.

We have taken into account the assertion of former Conrail officer Williams on remand that the Valley Industrial Track remains active, but his recollections are not sufficient to persuade us that the abandonment was not consummated. For example, in his verified statement attached to AVRC's May 11, 2011 reply, Williams alludes to the Conrail May 1984 memo where he proposes an option of reactivating track for continued rail service. In his 2011 statement, he asserts that this track to be reactivated is the Valley Industrial Track. But there is

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<sup>36</sup> See AVRC's Reply, Exh. F, May 11, 2011. In a May 14, 1984 memo from AVRC's witness Williams to the Conrail Operating Committee, Williams discusses alternatives to allow continued rail service to the Produce Terminal. His second alternative reads: "*City* would reactivate track on the north side of the terminal where trucks now access the terminal. *City* owns property and would be responsible for rehabilitation." (Emphasis added.)

<sup>37</sup> The agency had requested such a letter in its decision authorizing the February 1984 VIT Abandonment. Absence of the letter is not dispositive in light of the other evidence now available that is discussed here, which demonstrates that the weight of the evidence supports a finding that this authority was exercised prior to 1995.

<sup>38</sup> See Buncher Reply 15, June 2, 2009.

<sup>39</sup> The memo is attached as Exhibit F to AVRC's May 11, 2011 reply. The map is on the third page of the memo.

no affirmative description of the track that would be subject to reactivation as the “Valley Industrial Track.” To the contrary, as noted above, the May 1984 memo states that the track being considered for “reactivation” is on property owned by the City, whereas the Valley Industrial Track was on property owned by Buncher. Although Williams contends in his 2011 verified statement that continued service is shown in a 1993 ZTS Map as being provided over a line designated as “Line 703” (also known as Track 3), the map Conrail provided to Buncher prior to Buncher’s 1983 property purchase does not show Line 703 as crossing Buncher’s property.<sup>40</sup>

Conrail’s transfer of the easement to AVRC does not establish that the consummation did not occur. Although Conrail included a rail easement for the property in question in its 1995 deed selling rail property to AVRC, it did so by quitclaim deed. Accordingly, Conrail was not warranting that it still possessed a railroad easement that remained available for use as a line of railroad, but only that it was selling AVRC whatever interest it might have in the property. Thus, the deed language is insufficient to outweigh the other evidence now in the record supporting the conclusion that the Valley Industrial Track had been abandoned by 1995.

D. The evidence favoring Buncher’s position outweighs the remaining evidence in the record.

While AVRC has provided some evidence to support its position and other evidence before us here is contradictory or ambiguous, the weight of the evidence that is now available supports Buncher’s position. For instance, when determining in the June 2010 decision that the February 1984 VIT Abandonment did not refer to the line across Buncher’s property, the Board relied on the fact that the February 1984 VIT Abandonment referred to a line that connected to the Fort Wayne Connecting Track at the Fort Wayne Bridge. The Board originally believed that the 1972 Abandonment had extinguished a line along Railroad Street where it would have connected to the Fort Wayne Bridge, and, therefore, was persuaded that only a line along Smallman Street would have met the description of the line subsequently authorized for abandonment in the February 1984 VIT Abandonment.

Although the actual import of the 1972 Abandonment on the area’s railroad lines is still not entirely clear, the new evidence before us suggests that we placed too much reliance on the 1972 Abandonment in our prior decision. Through our own research, we now have a complete application for the 1972 Abandonment, including a large color map. This map does show that the Penn Central Trustees filed for authority to abandon track not only along Railroad Street, which is north of the Produce Terminal, but also along Smallman Street, which is south of the Produce Terminal. However, it is not certain that the Penn Central Trustees exercised any of

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<sup>40</sup> See Buncher’s Rebuttal 7, May 26, 2011, and exhibits cited therein. While AVRC’s witness Peterson asserts on reply that: “To this day, AVRR serves J.E. Corcoran at the Produce Terminal via its rail facilities along Railroad Street,” it could only be some portion of AVRC’s line farther east past Buncher property. Clearly that service is not being conducted using the Buncher property, which is paved over and has no track on it.

their 1972 Abandonment authority, given new record evidence that the ICC extended their consummation deadline into 1977<sup>41</sup>—beyond their departure date from the line and the transfer of the line to Conrail in 1976. This evidence undercuts an argument the Board found persuasive in its June 2010 decision, *i.e.*, the fact that Conrail would not have sought to abandon the same segment in 1984 that the Penn Central Trustees had obtained abandonment authority for in 1972. Simply stated, the fact that the newly available evidence establishes that the Penn Central Trustees sought in 1972 to abandon track on both Railroad and Smallman Streets, but may not have actually consummated the authority for either, means that the 1972 Abandonment cannot properly be used to infer which line was covered by the February 1984 VIT Abandonment.

Finally, although the record contains a verified statement provided by Conrail Trainmaster Streett to the effect that, in the mid to late 1970s, the line along Railroad Street was actively serving customers, and had not been abandoned, Streett is attempting to recall events that occurred decades ago.<sup>42</sup> We decline to credit the statement because: (1) while Streett recalls customers getting service on Railroad Street, the Notice of Insufficient Revenue for Sub-No. 558N in September 1983 indicated no active movements and zero revenues; (2) shipper protests surfaced in December 1983 only after Conrail filed an NIR in Sub-No. 641N for a portion of the Smallman Street line on the south side of the terminal, foreshadowing the abandonment of a line along Smallman Street; and (3) the May 14, 1984 Conrail memo from Williams establishes that the Produce Terminal was serviced by rail on its south side while the north side was used for truck service at that time.<sup>43</sup>

## CONCLUSION

For the reasons discussed above, we are reopening this proceeding and vacating and reversing our June 15, 2010 decision finding that AVRC's rail easement over Buncher's property remains active. We voluntarily sought remand of this case back to the agency after Buncher submitted new information about the relevance of the Smallman Abandonments on appeal. The weight of the evidence now supports the conclusion that Conrail sought to abandon the Valley Industrial Track crossing Buncher's property in Sub-No. 558N, that the ICC granted that authority in the February 1984 VIT Abandonment, and that that authority was consummated prior to 1995.

### It is ordered:

1. The Motion to Adduce Additional Evidence Pursuant to 28 U.S.C. § 2347(c) filed by The Buncher Company before the U.S. Court of Appeals for the District of Columbia Circuit will be treated as a petition to reopen based on new evidence.

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<sup>41</sup> See Appendix E.

<sup>42</sup> See AVRC's Reply, July 15, 2009.

<sup>43</sup> See AVRC's Reply, Exh. F, May 11, 2011.

2. The Buncher Company's petition to reopen based on new evidence is granted, and the Board's June 15, 2010 decision in this proceeding finding that AVRC's rail easement over Buncher's property remains active is vacated and reversed.

3. This decision is effective 30 days after its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

APPENDIX A

CONRAIL

FILED

INTERSTATE  
COMMERCE COMMISSION

September 9, 1983

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Room 1312  
12th and Constitution Avenues, NW  
Washington, D.C. 20423

Re: Application Under Section 308(c) of the Regional  
Rail Reorganization Act of 1973, as enacted by  
Section 1156 of the Northeast Rail Service Act of  
1981, for abandonment of the Fort Wayne Connecting  
Track and the Valley Industrial Track in  
Allegheny County, Pennsylvania  
Docket No. AB 167 (Sub No. 550N)

Dear Mrs. Mergenovich:

Enclosed for filing with the Commission are the original  
and six copies of Notice of Insufficient Revenue in reference  
to the above lines. This Notice is submitted under Section  
308(c) of the Regional Rail Reorganization Act of 1973, as  
enacted by Section 1156 of the Northeast Rail Service Act of  
1981.

Copies of the Notice have been served on the agencies  
designated on the attachment to this letter. No shippers are  
affected.

Please stamp and return the enclosed extra copy of this  
letter to acknowledge receipt.

Very truly yours,

*Charles E. Mechem*  
Charles E. Mechem  
Senior General Attorney  
1138 Six Penn Center Plaza  
Philadelphia, Pa. 19103  
(215) 977-5017

CEM/km  
Enclosures



September 9, 1983  
Page 2

cc: The Honorable Richard L. Thornburgh  
Governor, Commonwealth of Pennsylvania  
State Capitol  
Harrisburg, PA 17120

Pennsylvania DOT  
1200 Transportation and Safety Building  
Harrisburg, PA 17120

Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17120

Rail Services Planning Office  
12th and Constitution Avenues, NW  
Washington, DC 20423

Harry C. Dennis  
Office of Federal Assistance  
(RFA-23)  
Federal Railroad Administration  
400 Seventh Street, SW  
Washington, DC 20036

Mr. Wayne A. Michel  
Office of Proceedings  
Interstate Commerce Commission  
12th & Constitution Avenue, NW  
Washington, DC 20423

Director, Extension Service  
Dr. J.M. Beattie  
Agrl. Administration Bldg.  
Pennsylvania State University  
University Park, Pa. 16802

Bureau of Outdoor Recreation  
U.S. Dept. of Interior  
18th & Constitution, NW  
Washington, DC 20240

Office of the Special Counsel  
Interstate Commerce Commission  
Washington, DC 20423

September 9, 1983  
Page 3

Military Traffic Management  
Command - Nassif Building - Room 720  
STOP 105 MT-SA  
Washington, DC 20315

National Railroad Passenger Corporation  
400 North Capitol Street, NW  
Washington, DC 20001

Railroad Retirement Board  
844 North Rush Street  
Chicago, IL 60611

Railway Labor Executives Association  
Railway Labor Building  
400 1st Street, NW  
Washington, DC 20001

William B. Parker  
Chief, Market Planning  
U. S. R. A.  
955 L'Enfant Plaza, North - SW  
Washington, DC 20595

Steve Branca  
Department of City Planning  
Public Safety Building  
Pittsburgh, PA 15219

Docket AB 167  
(Sub No. 558N)

NOTICE OF INSUFFICIENT REVENUE  
CONSOLIDATED RAIL CORPORATION

Notice is hereby given that the lines of railroad described below, operated by Consolidated Rail Corporation (Conrail), generate insufficient revenues to justify their continued operation and maintenance.

- (1) The Fort Wayne Connecting Track (including the lower level of the Fort Wayne Bridge) from a point in Pittsburgh on the east side of Sandusky Street where Conrail's line connects with the Conemaugh Main Line (approximately Milepost 0.8) to its junction with the Valley Industrial Track (approximately Milepost 0.0), and
- (2) The Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (approximately Milepost 0.0) to the north side of 21st Street (approximately Milepost 0.66).

The proposed abandonment involves approximately 1.46 miles of lines in Allegheny County, Pennsylvania.

Accordingly, it is Conrail's intention, ninety (90) days after filing this notice, to file application with the Interstate Commerce Commission (ICC) under Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act) for a

certificate approving the abandonment of the aforesaid lines. A map showing the location of the lines and a copy of Section 308 of RRR Act are attached to this Notice. Also attached hereto is a preliminary estimate of the net liquidation value of the lines. The figures appearing in the attached statement are subject to revision when the application is filed. Because no traffic currently uses the line it is impossible to estimate the subsidy that would be required for a hypothetical future operation.

Copies of this Notice have been served, on the date specified below, on the Governor of Pennsylvania, the Pennsylvania Public Utility Commission, the Pennsylvania Department of Transportation, the State Agricultural Extension Service, the Rail Service Planning Office of the ICC, the Federal Railroad Administration, the Office of Proceedings of the ICC, the Bureau of Outdoor Recreation, the Office of Special Counsel of the ICC, the National Railroad Passenger Corporation, the Military Traffic Management Command, the Railroad Retirement Board, and the Railway Labor Executives Association. No shippers are affected.

Date: September 9, 1983

Consolidated Rail Corporation  
Notice of Insufficient Revenues

Docket AB-167  
Sub No. 558H

**EXHIBIT A  
LOCATION AND MAP**

At Pittsburgh

**FT. WAYNE CONNECTING TRACK\***

Jct. with Conemaugh M.L.-E. Side of Sandusky St. (Approx. M.P. 0.8) to  
Jct. with Valley Ind. Track (Approx. M.P. 0.0)

**VALLEY INDUSTRIAL TRACK**

(Formerly Allegheny Sec.)

Jct. with Ft. Wayne Conn. Track (Approx. M.P. 0.0) to  
N. Side of 21st Street (Approx. M.P. 0.66)

State(s): PA

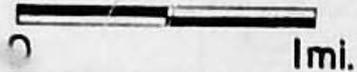
Counties: Allegheny



\* Including the Lower Level of the Fort Wayne Bridge.

PROPOSED ABANDONMENT 

SCALE



Consolidated Rail Corporation  
Notice of Insufficient Revenues

Docket AB-167  
Sub. No. 150 N

EXHIBIT B PRELIMINARY INFORMATION At Pittsburgh FT. WAYNE CONNECTING TRACK Jct. with Conemaugh M.L.-E. Side of Sandusky St. (Approx. M.P. 0.8) to Jct. with Valley Ind. Track (Approx. M.P. 0.0) VALLEY INDUSTRIAL TRACK (Formerly Allegheny Sec.) Jct. with Ft. Wayne Conn. Track (Approx. M.P. 0.0) to N. Side of 21st Street (Approx. M.P. 0.66)				
Line No.	Description	For Calendar Year 1987		
		Base Data	Subsidy	
<u>Traffic and Revenue</u>				
1.	Freight revenue for _____ orig./term carloads	\$ _____	\$ _____	
2.	All other revenue and income.....	_____	_____	
3.	Total revenues attributable.....	_____	_____	
<u>Avoidable Costs</u>				
4.	Maintenance of way and structures.....	_____	Former overhead Route. No originating or terminating traffic during last 12 months.	
5.	Maintenance of equipment.....	_____		
6.	Transportation.....	_____		
7.	General and administrative.....	_____		
8.	Freight car costs.....	_____		
9.	Revenue taxes .....	_____		
10.	Property taxes .....	_____		
11.	Total on-branch costs.....	_____		
12.	Off-branch costs.....	_____		
13.	Total avoidable costs.....	_____		
<u>Subsidization Costs</u>				
14.	Rehabilitation.....			_____
15.	Administrative costs.....			_____
16.	Casualty reserve account.....		_____	
17.	Total subsidization costs.....		_____	
<u>Return on Value</u>				
18.	Net salvage value.....		65,913	
19.	Estimated value of underlying real estate ..		109,500	
20.	Net liquidation value of line.....		_____	
21.	Working capital.....		175,413	
22.	Total valuation of property.....		_____	
23.	Rate of return.....		_____	
24.	Total return on value.....		16.7%	
<u>Avoidable Loss/Estimated Subsidy</u>				
25.	Avoidable loss from operations.....	_____		
26.	Opportunity costs.....	_____		
27.	Total avoidable loss	\$ _____		
28.	Estimated subsidy	_____	\$ _____	

Exhibit B, page 1 of 2

EXHIBIT B  
PRELIMINARY INFORMATION  
At Pittsburgh  
FT. WAYNE CONNECTING TRACK  
Jct. with Conemaugh M.L.-E. Side of Sandusky St. (Approx. M.P. 0.8) to  
Jct. with Valley Ind. Track (Approx. M.P. 0.0)  
VALLEY INDUSTRIAL TRACK (Formerly Allegheny Sec.)  
Jct. with Ft. Wayne Conn. Track (Approx. M.P. 0.0) to  
N. Side of 21st Street (Approx. M.P. 0.66)

Line No.	FOOTNOTES
18	The NSV stated in Line 18 may include the value of certain facilities which are not "necessary to provide effective transportation service," as that term is used in 49 USC § 10905 (f)(1)(c) and which, moreover, Conrail would be at liberty to abandon without the approval of the Commission. Conrail reserves the right to exclude the aforesaid facilities, if any, from any sale or subsidy under Section 308 of the RRR Act and 49 USC § 10905 and will furnish the value thereof in any proceeding conducted under said Section to establish the terms and conditions of a sale or subsidy.
19	To make a preliminary estimate of the value of the real estate underlying the subject line, Conrail has used average values per mile derived from recent appraisals of lines with similar real estate characteristics. These averages are used <u>solely</u> for the purpose of illustrating subsidy estimates and should not be construed as establishing either a final subsidy estimate or purchase price. If and when an abandonment application is filed for this line, that application will include a current appraised value for the underlying real estate that will supersede the estimate provided herein and <u>will</u> establish the subsidy amount or purchase price for offers under Section 308 (c) and (d) of the Regional Rail Reorganization Act of 1973 as amended by Section 1156 of the Northeast Rail Service Act of 1981. Potential offerors should therefore use the estimates provided only for purposes of preliminary evaluation and should <u>expect</u> the appraised value to differ significantly from the estimate.

SEC. 308 OF REGIONAL RAIL REORGANIZATION  
ACT OF 1973 (45 U.S.C.A. 748)

EXCERPTS FROM 49 U.S.C.A. 10905

§ 748. Abandonment

- (a) General. The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49, United States Code [49 USCS §§ 10901 et seq].
- (b) Applications for abandonment. Any application for abandonment that is filed by the Corporation under this section before December 1, 1981, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.
- (c) Notice of insufficient revenues. (1) The Corporation may, prior to November 1, 1981, file with the Commission a notice of insufficient revenues for any line which is part of the system of the Corporation.
- (2) At any time after the 90-day period beginning with the filing of a notice of insufficient revenues for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.
- (d) Offers of financial assistance. (1) The provisions of section 10905(d)-(f) of title 49, United States Code [49 USCS § 10905(d)-(f)] (including the timing requirements of subsection (d) thereof), shall apply to any offer of financial assistance under subsection (b) or (c) of this section.
- (2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.
- (e) Liquidation. (1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.
- (2) Appraisal made under paragraph (1) shall not be appealable.
- (3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such line.
- (B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 8 months if he assumes all liability of any sort related to such property.
- (4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any track liquidations shall be paid into the general fund of the Treasury of the United States.
- (f) Employee protection. The provisions of section 10901(b)(7) of title 49, United States Code [49 USCS § 10901(b)(7)], shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of title V of this Act [former 45 USCS §§ 771 et seq] immediately prior to the effective date of the Northeast Rail Service Act of 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 701 of this Act [45 USCS § 79].
- (d) If, within 15 days after the publication required in subsection (c) of this section, the Commission finds that—
- (1) a financially responsible person (including a government authority) has offered financial assistance to enable the rail transportation to be continued over last part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, and
  - (2) it is likely that the assistance would be equal to—
    - (A) the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or
    - (B) the acquisition cost of that part of the railroad line;
- the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance in accordance with subsections (e) and (f) of this section.
- (e) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate for so long as the agreement, or an extension or modification of the agreement, is in effect. If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission shall approve the transaction and dismiss the application for abandonment or discontinuance. If the carrier and a financially responsible person (including a government authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Commission establish the conditions and amount of compensation. If no agreement is reached within 30 days after the offer is made and neither party requests that the Commission establish the conditions and amount of compensation during that same period, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance.
- (f)(1) Whenever the Commission is requested to establish the conditions and amount of compensation under this section—
- (A) the Commission shall render its decision within 60 days;
  - (B) where subsidy has been offered, the Commission shall determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line; and
  - (C) where an offer of purchase has been made in order to continue rail service on the line, the Commission shall determine the price and other terms of sale. In no case shall the Commission set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portions necessary to provide effective transportation services).
- (2) The decision of the Commission shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Commission's decision. In such a case, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance, unless other offers are being considered pursuant to paragraph (3) of this subsection.
- (3) If a carrier receives more than one offer to purchase or subsidize, it shall select the offeror with whom it wishes to transact business, and complete the sale or subsidy agreement, or request that the Commission establish the conditions and amount of compensation prior to the 40th day after the date on which notice was published under subsection (c) of this section. If no agreement on subsidy or sale is reached within the 40-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request that the Commission establish the conditions and amount of compensation. If the Commission has established the conditions and amount of compensation and the original offer has been withdrawn, any other offeror may accept the Commission's decision within 30 days of such decision, and the Commission shall require the carrier to enter into a sale or subsidy agreement with such offeror, if such sale or agreement incorporates the Commission's decision.
- (4) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.
- (5) Any subsidy provided under this section may be discontinued on notice of 60 days. Unless, within such 60-day period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was or was to be discontinued, the Commission shall, at the carrier's request, immediately issue a certificate authorizing the abandonment or discontinuance of service on the line.

APPENDIX B

**CONRAIL**



**FILED**

OCT 31 1983

INTERSTATE  
COMMERCE COMMISSION



October 28, 1983

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Room 1312  
12th and Constitution Avenues, NW  
Washington, DC 20423

Re: Application Under Section 308(c) of the Regional  
Rail Reorganization Act of 1973, as enacted by  
Section 1156 of the Northeast Rail Service Act of  
1981, for abandonment of the Smallman Street  
Branch in Pennsylvania  
Docket No. AB 167 (Sub No. 641N)

Dear Mrs. Mergenovich:

**FILE IN DOCKET**

Enclosed for filing with the Commission are the original  
and six copies of Notice of Insufficient Revenue in reference  
to the above line, the location and geographical limits of  
which are set forth in the notice and in the attachments  
thereto. This Notice is submitted under Section 308(c) of  
the Regional Rail Reorganization Act of 1973, as enacted by  
Section 1156 of the Northeast Rail Service Act of 1981.

Copies of the Notice have been served on the shippers  
served by the line and upon agencies designated on the  
attachment to this letter.

Please stamp and return the enclosed extra copy of this  
letter to acknowledge receipt.

Very truly yours,

*Charles E. Mechem*  
Charles E. Mechem  
Senior General Attorney  
1138 Six Penn Center Plaza  
Philadelphia, Pa. 19103  
(215) 977-5017

**FILED**

OCT 31 1983

INTERSTATE  
COMMERCE COMMISSION

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FEE OPERATIONS BR.

CEM/km  
Enclosures

October 28, 1983  
Page 2

cc: The Honorable Richard L. Thornburgh  
Governor, Commonwealth of Pennsylvania  
State Capitol  
Harrisburg, PA 17120

Pennsylvania DOT  
1200 Transportation and Safety Building  
Harrisburg, PA 17120

Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17120

Rail Services Planning Office  
12th and Constitution Avenues, NW  
Washington, DC 20423

Harry C. Dennis  
Office of Federal Assistance  
(RFA-23)  
Federal Railroad Administration  
400 Seventh Street, SW  
Washington, DC 20036

Mr. Wayne A. Michel  
Office of Proceedings  
Interstate Commerce Commission  
12th & Constitution Avenue, NW  
Washington, DC 20423

Director, Extension Service  
Dr. J.M. Beattie  
Agrl. Administration Bldg.  
Pennsylvania State University  
University Park, Pa. 16802

Bureau of Outdoor Recreation  
U.S. Dept. of Interior  
18th & Constitution, NW  
Washington, DC 20240

Office of the Special Counsel  
Interstate Commerce Commission  
Washington, DC 20423

October 28, 1983  
Page 3

Military Traffic Management  
Command - Nassif Building - Room 720  
STOP 105 MT-SA  
Washington, DC 20315

National Railroad Passenger Corporation  
400 North Capitol Street, NW  
Washington, DC 20001

Railroad Retirement Board  
844 North Rush Street  
Chicago, IL 60611

Railway Labor Executives Association  
Railway Labor Building  
400 1st Street, NW  
Washington, DC 20001

William B. Parker  
Chief, Market Planning  
U. S. R. A.  
955 L'Enfant Plaza, North - SW  
Washington, DC 20595

New Federal Cold Storage  
1501 Penn Avenue  
Pittsburgh, PA 15222

KML Sales, Inc.  
16th & Smallman Streets  
Pittsburgh, PA 15222

Consumers Produce Company  
21st & Smallman Streets  
Pittsburgh, PA 15222

J. E. Corcoran Company  
Penna. Produce Terminal  
Pittsburgh, PA 15222

Corso Potato Company  
18th & Smallman Streets  
Pittsburgh, PA 15222

October 28, 1983  
Page 4

G&M Produce Company, Inc.  
Catanzaro Building  
Pittsburgh, PA 15222

Gullo Produce Company  
21st & Smallman Streets  
Pittsburgh, PA 15222

Union Fruit Auction  
Pa. Produce Terminal  
Pittsburgh, PA 15222

Golden Triangle Pack  
21st & Smallman Streets  
Pittsburgh, PA 15222

Stanford Seed Company  
2530 Smallman Street  
Pittsburgh, PA 15222

Pennsylvania Macaroni Company  
2012 Penn Avenue  
Pittsburgh, PA 15222

Benkovitz Seafoods  
23rd & Smallman Streets  
Pittsburgh, PA 15222

Mr. Steve Branca  
Department of City Planning  
Public Safety Building  
Pittsburgh, PA 15219

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I. O. C.  
FEE OPERATION BR.

Docket AB 167  
(Sub No. 641N)

NOTICE OF INSUFFICIENT REVENUE  
CONSOLIDATED RAIL CORPORATION

Notice is hereby given that the line of railroad described below, operated by Consolidated Rail Corporation (Conrail), generates insufficient revenues to justify its continued operation and maintenance.

The Smallman Street Branch in Pittsburgh from a point east of 14th Street (approximately Milepost 0.3) to a point east of 24th Street (approximately Milepost 0.85).

The proposed abandonment involves approximately 0.55 mile of line in Pennsylvania.

Accordingly, it is Conrail's intention, ninety (90) days after filing this notice, to file application with the Interstate Commerce Commission (ICC) under Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act) for a certificate approving the abandonment of the aforesaid line. A map showing the location of the line and a copy of Section 308 of RRR Act are attached to this Notice. Also attached hereto is a preliminary estimate of the estimated subsidy required for continued operation of the line and the net

liquidation value of the line. The figures appearing in the attached statement are subject to revision when the application is filed.

Copies of this Notice have been served, on the date specified below, on shippers served by the line, the Governor of Pennsylvania, the Pennsylvania Public Utility Commission, the Pennsylvania Department of Transportation, the State Agricultural Extension Service, the Rail Service Planning Office of the ICC, the Federal Railroad Administration, the Office of Proceedings of the ICC, the Bureau of Outdoor Recreation, the Office of Special Counsel of the ICC, the National Railroad Passenger Corporation, the Military Traffic Management Command, the Railroad Retirement Board, and the Railway Labor Executives Association.

Date: October 28, 1983

Consolidated Rail Corporation  
Notice of Insufficient Revenues

Docket AB-167  
Sub No. 641 N

**EXHIBIT A**  
**LOCATION AND MAP**

**SMALLMAN STREET TRACK**  
In Pittsburgh  
E. of 14th Street (Approx. M.P. 0.3) to  
Jct. with Valley Industrial E. of 24th Street (Approx. M.P. 0.85)

State(s): PA Counties: Allegheny



PROPOSED ABANDONMENT

SCALE



Consolidated Rail Corporation  
 Notice of Insufficient Revenues

ICC Docket AB-167 Sub No. 691 N

**EXHIBIT B**  
**PRELIMINARY INFORMATION**  
SMALLMAN STREET

Line No.	Description	For Calendar Yr 1982	
		Base Data	Subsidy
<b>Traffic and Revenue</b>			
1.	Freight revenue for 187 orig/term carloads	\$ 171614	\$ 171614
2.	All other revenue and income . . . . .	0	0
3.	Total revenues attributable . . . . .	171614	171614
<b>Avoidable Costs</b>			
4.	Maintenance of way and structures . . . . .	3656	3656
5.	Maintenance of equipment . . . . .	7736	7736
6.	Transportation . . . . .	18711	18711
7.	General and administrative . . . . .	0	0
8.	Freight car costs . . . . .	12141	12141
9.	Revenue taxes . . . . .	0	0
10.	Property taxes . . . . .	0	0
11.	Total on-branch costs . . . . .	42244	42244
12.	Off-branch costs . . . . .	264654	264654
13.	Total avoidable costs . . . . .	306898	306898
<b>Subsidization Costs</b>			
14.	Rehabilitation . . . . .	//////	36971
15.	Administrative costs . . . . .	//////	10297
16.	Casualty reserve account . . . . .	//////	1812
17.	Total subsidization costs . . . . .	//////	49080
<b>Return on Value</b>			
18.	Net salvage value . . . . .	//////	18195
19.	Est. value of underlying real estate . . . . .	//////	2750
20.	Net liquidation value of line . . . . .	//////	20945
21.	Working capital . . . . .	//////	1510
22.	Total valuation of property . . . . .	//////	22455
23.	Rate of return . . . . .	//////	17.7%
24.	Total return on value . . . . .	//////	3975
<b>Avoidable Loss/Estimated Subsidy</b>			
25.	Avoidable loss from operations . . . . .	\$ 135284	//////
26.	Opportunity costs . . . . .	27920	//////
27.	Total avoidable loss . . . . .	\$ 163204	//////
28.	Estimated subsidy (lines 13,17, and 24 less line 3)	//////	\$ 100339

Date computed: October 12, 1983

Exhibit B, page 1 of 2

Consolidated Rail Corporation  
Notice of Insufficient Revenue

Docket AB-167  
Sub No. 641 N

**EXHIBIT B**  
**PRELIMINARY INFORMATION**

**SMALLMAN STREET TRACK**

Calculated using the cost methodologies and standards prescribed by 49 CFR, Part 1121, as modified by the Commission in Finance Docket 29623.

Line No.	FOOTNOTES
9	Conrail pays no state revenue taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981.
10	Conrail pays no state-levied property taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. Conrail continues to pay property taxes levied by political subdivisions of States, as such taxes are not subject to the exemption.
18	The NSV stated in Line 18 may include the value of certain facilities which are not "necessary to provide effective transportation service," as that term is used in 49 USC § 10905 (f)(1)(c) and which, moreover, Conrail would be at liberty to abandon without the approval of the Commission. Conrail reserves the right to exclude the aforesaid facilities, if any, from any sale or subsidy under Section 308 of the RRR Act and 49 USC § 10905 and will furnish the value thereof in any proceeding conducted under said Section to establish the terms and conditions of a sale or subsidy.
19	To make a preliminary estimate of the value of the real estate underlying the subject line, Conrail has used average values per mile derived from recent appraisals of lines with similar real estate characteristics. These averages are used solely for the purpose of illustrating subsidy estimates and should not be construed as establishing either a final subsidy estimate or purchase price. If and when an abandonment application is filed for this line, that application will include a current appraised value for the underlying real estate that will supersede the estimate provided herein and will establish the subsidy amount or purchase price for offers under Section 308 (c) and (d) of the Regional Rail Reorganization Act of 1973 as amended by Section 1156 of the Northeast Rail Service Act of 1981. Potential offerors should therefore use the estimate provided only for purposes of preliminary evaluation and should <u>expect</u> the appraised value to differ significantly from the estimate.
28	Estimated subsidy that would have been required in the base year. Conrail will provide an estimate of the future subsidy requirement in the abandonment application to be filed 90 days after the filing of this Notice.

SEC. 308 OF REGIONAL RAIL REORGANIZATION  
ACT OF 1973 (45 U.S.C.A. 748)

EXCERPTS FROM 49 U.S.C.A. 10905

§ 748. Abandonment

- (a) **General.** The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49, United States Code [49 USCS §§ 10901 et seq].
- (b) **Applications for abandonment.** Any application for abandonment that is filed by the Corporation under this section before December 1, 1981, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.
- (c) **Notice of insufficient revenues.** (1) The Corporation may, prior to November 1, 1981, file with the Commission a notice of insufficient revenues for any line which is part of the system of the Corporation.
- (2) At any time after the 90-day period beginning with the filing of a notice of insufficient revenues for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.
- (d) **Offers of financial assistance.** (1) The provisions of section 10905(d)-(f) of title 49, United States Code [49 USCS § 10905(d)-(f)] (including the timing requirements of subsection (d) thereof), shall apply to any offer of financial assistance under subsection (b) or (c) of this section.
- (2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.
- (e) **Liquidation.** (1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.
- (2) Appraisals made under paragraph (1) shall not be appealable.
- (3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such line.
- (B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 6 months if he assumes all liability of any sort related to such property.
- (4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any track liquidations shall be paid into the general fund of the Treasury of the United States.
- (f) **Employee protection.** The provisions of section 10903(b)(2) of title 49, United States Code [49 USCS § 10903(b)(2)], shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of title V of this Act [former 45 USCS §§ 771 et seq] immediately prior to the effective date of the Northeast Rail Service Act of 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 701 of this Act [45 USCS § 797].

(d) If, within 15 days after the publication required in subsection (c) of this section, the Commission finds that—

- (1) a financially responsible person (including a government authority) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued; and
- (2) it is likely that the assistance would be equal to—
- (A) the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or
- (B) the acquisition cost of that part of the railroad line;
- the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance in accordance with subsections (a) and (f) of this section.
- (e) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate for so long as the agreement, or an extension or modification of the agreement, is in effect. If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission shall approve the transaction and dismiss the application for abandonment or discontinuance. If the carrier and a financially responsible person (including a government authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Commission establish the conditions and amount of compensation. If no agreement is reached within 30 days after the offer is made and neither party requests that the Commission establish the conditions and amount of compensation during that same period, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance.
- (f)(1) Whenever the Commission is requested to establish the conditions and amount of compensation under this section—
- (A) the Commission shall render its decision within 60 days;
- (B) where subsidy has been offered, the Commission shall determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line; and
- (C) where an offer of purchase has been made in order to continue rail service on the line, the Commission shall determine the price and other terms of sale. In no case shall the Commission set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services).
- (2) The decision of the Commission shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Commission's decision. In such a case, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance, unless other offers are being considered pursuant to paragraph (3) of this subsection.
- (3) If a carrier receives more than one offer to purchase or subsidize, it shall select the offeror with whom it wishes to transact business, and complete the sale or subsidy agreement, or request that the Commission establish the conditions and amount of compensation prior to the 40th day after the date on which notice was published under subsection (c) of this section. If no agreement on subsidy or sale is reached within the 40-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request that the Commission establish the conditions and amount of compensation. If the Commission has established the conditions and amount of compensation and the original offer has been withdrawn, any other offeror may accept the Commission's decision within 20 days of such decision, and the Commission shall require the carrier to enter into a sale or subsidy agreement with such offeror, if such sale or agreement incorporates the Commission's decision.
- (4) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.
- (5) Any subsidy provided under this section may be discontinued on notice of 60 days. Unless, within such 60-day period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was or was to be discontinued, the Commission shall, at the carrier's request, immediately issue a certificate authorizing the abandonment or discontinuance of service on the line.

APPENDIX C

281-2610 281-6575

LONG DISTANCE  
412-281-1729



# Gullo Produce Company, Inc.

COMMISSION MERCHANT

52-58 TWENTY-FIRST STREET - PITTSBURGH, PA. 15222



December 7, 1983

Pennsylvania Department of Transportation  
1200 Transportation & Safety Building  
Harrisburg, PA 17120



Gentlemen:

Gullo Produce Co., located in the Pennsylvania produce terminal in Pittsburgh, is a wholesale buyer of fresh fruits and vegetables. To date this year, we have handled over 500,000 cartons of fresh fruits and vegetables originating from shipping areas throughout the United States. Our gross sales volume this year is expected to be over 10 million dollars.

We recently received a copy of the Conrail Notice of Insufficient Revenue (Docket AB 167, Sub. No. 6413), that proposes to abandon the .6 mile stretch of track that serves the Pittsburgh produce terminal. Gullo Produce Co. believes this abandonment will have extremely negative effects upon our business, as well as that of the other fresh fruit and vegetable receivers located in the Pittsburgh produce terminal.

As a general rule, the rates for direct rail service are considerably lower than those for over-the-road trucks and trailer on flatcar service. These lower costs are passed on to our customers, who are supermarket chains, restaurants, hospitals, etc. If we (and our competitors in the produce terminal) could no longer receive rail cars of fresh produce and were limited to trucks and trailer on flatcar service, then we believe the cost of fresh fruits and vegetables in the Pittsburgh metropolitan area would rise. Because direct rail service is the most energy-efficient mode of transportation, it does not appear to be sensible to allow Conrail to sever the only rail connection to the Pittsburgh produce terminal.

Further, it should be noted that the loss of a rail connection would make the Pittsburgh produce terminal the only major perishable distribution facility on the east coast without rail service. In our opinion, this would substantially lessen the use of this facility as a distribution center in the future and would decrease its property value.

Gullo Produce Co. respectfully requests that you give careful consideration to providing financial assistance to Conrail to keep this essential piece of track open. We would be glad to meet with you at your convenience to discuss this matter in greater detail.

Please do not hesitate to contact me if you have any questions.

Yours truly,

*Joseph Gullo*  
Joseph Gullo



ENTERED
Office of the Secretary
DEC 20 1983
5921
45 B Part of SA Public Record



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HOUSE OF REPRESENTATIVES, U.S.  
WASHINGTON, D. C.

..... December 9, ..... 19.83....

Mr. Reese H. Taylor, Jr., Chairman  
Interstate Commerce Commission  
ICC Building  
12th & Constitution Avenue, N.W.  
Washington, DC 20423

The attached communication is submitted for your consideration, and to ask that the request made therein be complied with, if possible.

If you will advise me of your action in this matter and have the letter returned to me with your reply, I will appreciate it.

Please forward reply to:

Honorable Joseph M. Gaydos  
318 Fifth Avenue  
McKeesport, Pa. 15132

INTERSTATE COMMERCE COMMISSION  
DEC 12 4 22 PM '83  
RECEIVED

Very truly yours,

*Joe Gaydos*  
..... M.C.

20th, Pennsylvania District

8302587



*Consumers Produce Co., Inc.*  
*of Pittsburgh*



22nd & A.V.R.R.  
PITTSBURGH, PA 15222

CARLOT RECEIVERS AND DISTRIBUTORS  
FRUITS - VEGETABLES

PHONES  
(412) 281-0722

December 7, 1983

Pennsylvania Department of Transportation  
1200 Transportation & Safety Building  
Harrisburg, PA 17120

Gentlemen:

Consumers Produce Co., Inc., located in the Pittsburgh Produce Market, has recently been notified by Conrail that they plan on closing the only stretch of track that serves our Terminal. As a direct receiver of fresh fruits and vegetables, we feel this would have adverse effects on ours and many other businesses in Pittsburgh and surrounding areas. Supermarkets, restaurants, hospitals and many others would be affected by higher produce costs because of the lack of rail service into our community.

Generally, direct rail service costs considerably less than other means of transportation. By not being able to bring in some shipments by rail, there is no doubt transportation costs, and, therefore, final costs to both us and the consumer will increase. With rail service being the most energy-efficient means of transportation, it makes no sense to allow Conrail to cut off the only rail connection servicing the Pittsburgh Terminal Market.

We at Consumers Produce Co. request that you do all you can so the Pittsburgh Produce Terminal is not cut off from growing areas all over the country. The amount of track involved is only six-tenths of one mile in length. Please give careful thought to providing financial aid to Conrail to keep this vital piece of track open.

Please feel free to contact me if you have any questions or comments.

Cordially,

CONSUMERS PRODUCE CO., INC.

*Alan L. Siger*  
Alan L. Siger  
Treasurer

ba

cc: See attached



"Try Consumers"



cc: Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Room 1312  
12th and Constitution Avenues, NW  
Washington, D.C. 20423

The Honorable Richard L. Thornburgh  
Governor, Commonwealth of Pennsylvania  
Harrisburg, PA 17120

Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17120

Rail Services Planning Office  
12th and Constitution Avenues, NW  
Washington, DC 20423

Mr. Wayne A. Michel  
Office of Proceedings  
Interstate Commerce Commission  
12th & Constitution Avenue, NW  
Washington, DC 20036

Director, Extension Service  
Dr. J.M. Beattie  
Agrl. Administration Bldg.  
Pennsylvania State University  
University Park, PA 16802

Office of the Special Counsel  
Interstate Commerce Commission  
Washington, D.C. 20423

Mr. Steve Branca  
Department of City Planning  
Public Safety Building  
Pittsburgh, PA 15219

Mr. Bernard Imming  
United Fresh Fruit and Vegetable Association  
North Washington @ Madison  
Alexandria, VA 22314

Senator John Heinz  
Federal Building  
Pittsburgh, PA 15222

cc: Senator Arlen Specter  
Federal Building  
Pittsburgh, PA 15222

Congressman William J. Coyne  
Federal Building  
Pittsburgh, PA 15222

Congressman Jos. M. Gaydos  
318 Fifth Avenue  
McKeesport, PA 15135

Congressman Douglas Walgren  
Federal Building  
Pittsburgh, PA 15222

**Interstate Commerce Commission**

Washington, D.C. 20423

**FILE IN DOCKET**

DEC 21 1983

*Rm. 1312*

OFFICE OF THE CHAIRMAN

Honorable Joseph M. Gaydos  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Gaydos:

Thank you for your recent communication enclosing a letter from Consumers Produce Co., Inc., of Pittsburgh, PA, opposing Conrail's proposed abandonment, in Docket No. AB-167 (Sub-No. 641N), of its Smallman Street Branch in Pittsburgh.

Although a copy of this letter has been placed in the public docket, the Commission has found that protests cannot be considered when examining Conrail abandonments.

Under the Northeast Rail Service Act of 1981, Public Law 97-35, signed into law on August 13, 1981, Conrail may apply to abandon any line on its system and the Commission must grant the application within 90 days. However, Conrail first must file a notice of insufficient revenues 90 days before filing the application. Since Conrail filed its notice of insufficient revenues with the Commission on October 31, 1983, its application cannot be filed until January 29, 1984, or later.

Because the Commission cannot deny, dismiss, reject, or condition these applications, it has decided that it cannot consider the adverse impacts of the abandonment, if any, on shippers or communities. The only basis for withholding an abandonment certificate is the filing of an offer of financial assistance either to purchase or subsidize the rail line within 90 days of the application filing date. Therefore, when Conrail's application is filed, it will be granted after 90 days unless a timely offer of financial assistance to purchase or subsidize the line is filed.

If your constituent intends to offer financial assistance, it should be noted that Federal funds are not available through this Commission. However, such funds may be available through the Federal Railway Administration, and your constituent should inquire as to this possibility.

If you have any further questions, please contact Wayne Michel of the Commission's Office of Proceedings, Rail Section. His telephone number is (202) 275-7657.

Sincerely yours,

*B. H. Helt*

COMMUNICATIONS SECTION  
DEC 21 1983



# United Fresh Fruit and Vegetable Association

NORTH WASHINGTON AT WASHINGTON, ALEXANDRIA, VIRGINIA 22314, 703/836-3410, Cable: UNIFRESH

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Dec 30 2 23 PM '83  
OFFICE OF PROCEEDINGS  
RAIL SECTION

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no cal level 1/3 + info re bus line of law  
votell

December 28, 1983

AB/67 Sub 641

### BOARD OF DIRECTORS

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Pacific Gamble Robinson Co  
Kirkland, Washington
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Sons of Growers, Inc.  
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  - Marvin Schwarz**  
Marvin Schwarz Produce  
Mercedes, Texas
  - Donald J. Smith**  
Turlock Fruit Company  
Turlock, California
  - Cayford W. Touchstone Jr.**  
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San Antonio, Texas
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Agri Sales  
Vista, California
- 
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  - Secretary and General Manager**  
**Valerie S. Linger**
  - Vice President, Member and Consumer Services**  
**John D. Nelson Jr.**
  - Vice President, Public Affairs**  
**Roger J. Sloan**

Mr. Wayne A. Michel  
Office of Proceedings  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Mr. Michel:

The United Fresh Fruit and Vegetable Association recently learned that the CONRAIL has made the decision to close a stretch of track located near the Pittsburgh Produce Terminal Market. The closing of this track will have a direct adverse impact on the ability of our members in the Pittsburgh area to receive rail shipments of fresh fruits and vegetables.

As you know, rail shipments are one of the most energy efficient forms of transportation. By eliminating this rail link, our members will be forced to use more expensive transportation modes. This additional cost will, of course, have to be passed on to consumers in the form of higher prices.

We understand that the stretch of track involved amounts to only six-tenths of one mile in length, yet provides buyers in the Pittsburgh market the ability to purchase, at reasonable cost, fresh produce commodities year-round from points throughout the nation.

We respectfully request your help in urging CONRAIL to retain this most important rail trackage. Thank you for your assistance and we look forward to hearing from you.

Sincerely,

Robert Colin Keeney  
Director of Government Relations

cc: United Members in Pittsburgh

RCK:mac

FILE IN DOCKET

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF PROCEEDINGS

January 4, 1984

Mr. Robert Colin Keeney  
Director of Government Relations  
United Fresh Fruit and Vegetable Association  
North Washington at Madison  
Alexandria, VA 22314

Dear Mr. Keeney:

This is in response to your December 28, 1983, letter opposing Conrail's proposed abandonment in Docket No. AB-167 (Sub-No. 641N) of its Smallman Street Branch in Pittsburgh, PA.

Although I have placed your letter in the public docket, the Commission has found that protests cannot be considered when examining Conrail abandonments.

Under the Northeast Rail Service Act of 1981, Public Law 97-35, signed into law on August 13, 1981, Conrail may apply to abandon any line in its system and the Commission must grant the application within 90 days. However, Conrail first must file a notice of insufficient revenues 90 days before filing the application. Since Conrail filed its notice of insufficient revenues with the Commission on October 31, 1983, its application cannot be filed until January 30, 1984, or later.

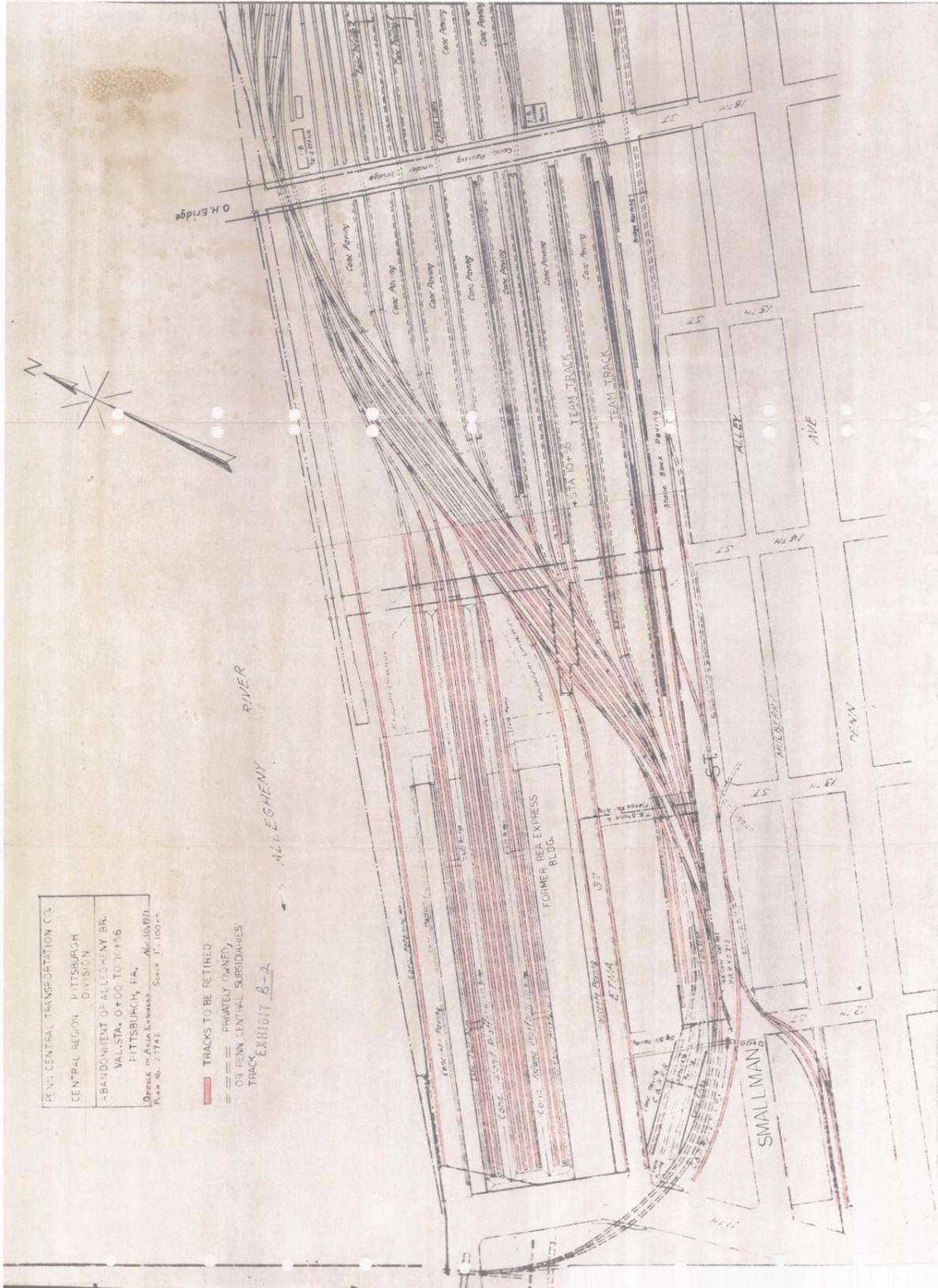
Because the Commission cannot deny, dismiss, reject, or condition these applications, it has decided that it cannot consider the adverse impacts of the abandonment, if any, on shippers or communities. The only basis for withholding an abandonment certificate is the filing of an offer of financial assistance either to purchase or subsidize the rail line within 90 days of the application filing date. Therefore, when Conrail's application is filed, it will be granted after 90 days unless a timely offer of financial assistance to purchase or subsidize the line is filed.

If you have any further questions, please contact me at (202) 275-7657.

Sincerely,

Wayne A. Michel  
Abandonment Coordinator  
Rail Section

APPENDIX D



APPENDIX E

ORDER

SERVICE DATE  
MARCH 15, 1973

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 26942

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., AND WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR, ABANDONMENT PORTION OF ITS ALLEGHENY BRANCH, PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA

In the matter of a further extension of time to consummate.

PRESENT: Kenneth H. Tuggle, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and the letter request of the applicant dated February 28, 1973, for a further extension of time within which the abandonment authorized by certificate and order of the Commission, Review Board Number 5, dated February 24, 1972, may be consummated; and good cause appearing therefor:

It is ordered, That the time within which the transaction may be consummated be, and it is hereby, further extended to April 17, 1974, and that the said certificate and order, as hereby modified, shall be and remain in full force and effect.

Dated at Washington, D. C., this 5th day of March, 1973.

By the Commission, Commissioner Tuggle.

  
ROBERT L. OSWALD  
Secretary

(SEAL)

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Policy Act of 1969.

# FILE IN DOCKET

## ORDER

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 26942

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., AND WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR, ABANDONMENT PORTION OF ITS ALLEGHENY BRANCH, PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA

IN THE MATTER OF A FURTHER EXTENSION OF TIME TO CONSUMMATE

PRESENT: KENNETH H. TUGGLE, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and the letter request of the applicant dated February 28, 1974, for a further extension of time within which the abandonment authorized by certificate and order of the Commission, Review Board Number 5, dated February 24, 1972, may be consummated; and good cause appearing therefor:

It is ordered, That the time within which the transaction may be consummated be, and it is hereby, further extended to April 17, 1975, and that the said certificate and order, as hereby modified, shall be and remain in full force and effect.

Dated at Washington, D. C., this 6th day of March, 1974.

By the Commission, Commissioner Tuggle.

ROBERT L. OSWALD,  
Secretary.

(SEAL)

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Policy Act of 1969.

RECEIVED  
MAR 8 3 50 PM '74  
ALLEGHENY BRANCH

RECORDED  
MAR 14 1974

FD 26942 GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR.,  
 Sec. 1(18) AND WILLARD WIRL, TRUSTEES OF THE PROPERTY OF PENN.  
 CENTRAL TRANSPORTATION COMPANY, DEBTOR ABANDONMENT FORT  
 OF ITS ALLEGHENY BRANCH, PITTSBURGH, ALLEGHENY COUNTY,  
 PENNSYLVANIA.

1971 W 12/6 Appl. filed.--aband. port. of its Allegheny Br. betwee  
 VS 0+00 and 15+56, 0.2 mi., in City of Pittsburgh,  
 Allegheny County, Pa.

Wallace D. Stewart, 925 Penn Central Station, Pitts-  
 burgh, Pa. 15222

2/2/72 Publication and posting due.  
 12/27 Certif. of service to applic. filed. (Stewart)  
 1972 1/10 Protest of Commonwealth of Pa. filed. (MacDougall) 118  
 1/13 Proof of publication and posting filed. (Stewart) 118  
 ✓ 1/13 Submitted - 1/14 to Knight.  
 1/17 Pet. of Commonwealth of Pa., withdrawing protest. (Mac-  
 Dougall) cy to Knight  
 ✓ 1/28 Assigned to Ex. Proger - RB 5.  
 ✓ 2/16 Ex. Proger's final cer't & order comp. 6 hrs.  
 ✓ 2/16 Final cer't & order cir'd to RB 5.  
 ✓ 2/24 Final cer't & order adopted by RB 5 - Grant and effect  
 35 days from date of service.

FD 26942

1972 2/25 To service w/docket. ~ -/5

1973 3/5 Tuggle order; Time to consummate extended to  
4/17/74 - 3/8 to service 3/15

1974 3/6 Tuggle order; Time to consummate ext'd to  
4/17/75 - 3/12 to service 3/19

**3/24 Tuggle order; Time to consummate ext'd to  
4/17/76 - 3/24 to service**

4/7 Brown order; Time to consummate ext'd to 4/17/77  
- 4/15 to service - 7/21