

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 167 (Sub-No. 445N)

CONRAIL ABANDONMENT OF LINES IN ZANESVILLE, OHIO

Decided: March 10, 2022

On November 30, 1981, the Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. § 748,¹ to abandon 40.8 miles of rail line in Zanesville, Ohio. By certificate and decision served March 12, 1982, Conrail was authorized to abandon segments totaling approximately 38.2 miles of the 40.8 miles of rail line,² and on July 13, 1982, the Interstate Commerce Commission (ICC) published an appraisal of the net liquidation value of 31.3 miles of the rail line in the Federal Register (47 Fed. Reg. 30,308).³ On July 30, 1982, pursuant to NERSA, the Ohio Rail Transportation Authority (ORTA) purchased approximately 31.4 miles of the line authorized for abandonment.

By petition filed February 18, 2020, in Docket No. FD 36387, the Ohio Rail Development Commission (ORDC), a successor to ORTA, requested that the Board issue a declaratory order finding that ORDC could pursue interim trail use/rail banking for 14.8 miles of the rail line ORTA purchased from Conrail in Perry and Muskingum Counties, Ohio (the Line),⁴ pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), once the then-operator of the Line was authorized to discontinue common carrier service. By decision served December 22, 2020, the Board granted ORDC's petition, finding that the Line remains within the Board's jurisdiction and would be eligible for interim trail use/rail banking under the Trails Act, once Ohi-Rail Corporation (Ohio-Rail), the then-operator of the Line, was authorized to discontinue service. See Ohio Rail Dev. Comm'n—Pet. for Declaratory Order, FD 36387, slip op. at 1, 6-7 (STB served Dec. 22, 2020).

¹ NERSA established separate procedures for certain abandonments filed by Conrail. See Conrail Abans. Under NERSA, 365 I.C.C. 472, 472 (1981).

² The remaining 2.6 miles of the line were subject to an offer of financial assistance pursuant to 45 U.S.C. § 748(d) and were not included in the abandonment authorization.

³ The ICC's appraisal did not include certain segments authorized for abandonment in its March 12, 1982 decision.

⁴ The Line, formerly known as the Glass Rock Branch, includes the Fultonham Running Track from milepost 0.0 to milepost 3.1 (Glass Rock-East) and Z&W Industrial Track from milepost 45.8 to milepost 57.5 (Glass Rock-West).

On January 12, 2023, in Docket No. AB 1321X, Ohio-Rail filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to discontinue service and terminate its lease operations on the Line. Notice of the exemption was served and published in the Federal Register on February 1, 2023 (88 Fed. Reg. 6801), and the exemption became effective on March 3, 2023.

On February 13, 2023, the Perry County Board of Commissioners (Perry County) filed a request for issuance of a certificate of interim trail use or abandonment (CITU) under the Trails Act to establish interim trail use/rail banking on the Line. On February 21, 2023, ORDC agreed to negotiate with Perry County toward an interim trail use agreement.

Perry County's request for a CITU complies with the requirements of 49 C.F.R. § 1152.29, and ORDC has notified the Board that it is willing to negotiate an agreement for interim trail use with Perry County. Therefore, a CITU will be issued. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) & (h). If no agreement is reached within one year, ORDC may fully abandon the Line. See 49 C.F.R. § 1152.29(c)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. The certificate and decision served on March 12, 1982, authorizing the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the parties to negotiate for interim trail use for the rail line, for a period of one year from the service date of this decision and certificate, until March 13, 2024.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.
5. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(c)(2), (h).

6. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and certificate and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by March 13, 2024, interim trail/rail banking use may be implemented. If no agreement is reached, ORDC may fully abandon the Line.

8. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.