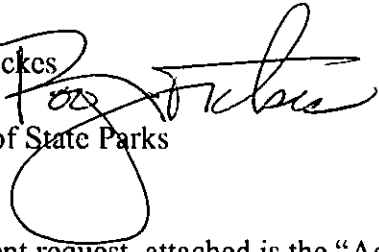


COMMONWEALTH OF PENNSYLVANIA  
Department of Conservation and Natural Resources  
March 24, 1999

**SUBJECT:** A-00111016 and C-00913256

**TO:** Secretary's Bureau File Room  
Public Utility Commission

**FROM:** Roger Fickes  
Director  
Bureau of State Parks



In response to your recent request, attached is the "Acknowledgement of Receipt & Acceptance of Service" form with my signature along with date acknowledging the Bureau of State Parks' receipt of the subject "Order."

If you have any questions, please contact Eric Milliron at 717-783-3343.

Attachment

044350

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SECRETARY'S BUREAU  
99 MAR 26 AM 8:07

SRB

JANICE L. M. LONGER

ATTORNEY AT LAW

CIPHER BUILDING  
36 EAST KING STREET

LANCASTER, PENNSYLVANIA 17602

(717) 295-8300

Fax (717) 295-3277

Kirkwood Office (717) 529-3119

055013

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DOCUMENT  
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May 19, 1999

Pennsylvania Public Utility Commission  
Harrisburg, PA 17105-3265

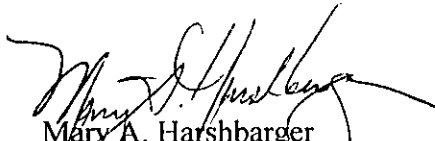
Re: Application of Consolidated Rail for the abolition of thirty-one  
crossings of the Enola Branch, Harrisburg Division, Lancaster County  
#A-00111016 and #C-00913256

Gentlemen:

Enclosed please find an original and two copies of a Praeceptum to Withdraw which was  
executed by Thomas A. Dittoe, Esquire, along with an original and two copies of an Entry of  
Appearance which was executed by Janice L.M. Longer, Esquire, who is the current solicitor for  
Eden Township. Kindly file these documents and return one time-stamped copy of each to our  
office. I have enclosed a self addressed, stamped envelope for your convenience.

Thank you for your attention to this matter.

Sincerely,



Mary A. Harshbarger  
Legal Assistant/Secretary

maeh  
enclosures

EEF

34

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265


Application of Consolidated Rail Corporation for  
the abolition of thirty-one crossings of the Enola  
Branch, Harrisburg Division, Lancaster County.

A-00111016  
C-00913256

PRAECIPE TO WITHDRAW

TO THE PROTHONOTARY:

Kindly withdraw my appearance on behalf of Eden Township in the within matter.

  
\_\_\_\_\_  
Thomas A. Dittoe, Esquire  
1707 Lincoln Highway East  
P.O. Box 10212  
Lancaster, PA 17605-0212  
(717) 293-8955

DOCUMENT  
FOLDER

**DOCKETED**  
MAY 24 1999

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JUN 30 1999

PA P.U.C.

# Supreme Court of Pennsylvania Middle District

A-00111016  
C-913256

June 29, 1999

434 MAIN CAPITOL BUILDING  
P.O. BOX 624  
HARRISBURG, PENNSYLVANIA 17108  
(717) 787-6181  
<http://www.courts.state.pa.us>

SHIRLEY BAILEY  
CHIEF CLERK

TO: Joyce A. Nettke, Esquire  
Michael H. Ranck, Esquire

RE: FRIENDS OF THE ATGLEN-SUSQUEHANNA TRAIL, INC. AND HISTORIC PRESERVATION TRUST  
OF LANCASTER COUNTY, INTERVENOR  
PETITIONERS  
V.  
PENNSYLVANIA PUBLIC UTILITY COMMISSION,  
RESPONDENT

DOCKETED

JUL 14 1999

*MZ*

No. 0782 M.D. Allocatur Docket 1998

Dear Counsel:

This is to advise you that the attached order has been entered on the Petition for Allowance of Appeal filed in the above-captioned matter.

Very truly yours,  
Office of the Prothonotary  
Supreme Court of Pennsylvania

SPB/aw

c: COMMONWEALTH 3003 C.D. 97  
Colins, PJ, McGinley, SMITH, Pellegrini, Friedman, Kelley & Leadbetter,  
C-00913256 & A-00111016  
Susan D. Colwell, Esquire  
Gina D'Alfonso, Asst. Counsel in Charge  
Kenneth Zielonis, Esquire  
Martha R. Smith, Asst. Counsel  
David Eaton, Esquire  
Benjamin C. Dunlap, Esquire  
Scott T. Wyland, Esquire  
Susan J. Smith, Esquire

DOCKETED  
AUG 10 1999

DOCUMENT  
FOLDER

EEF



LAW OFFICES  
NAUMAN, SMITH, SHISSLER & HALL, L.L.P.

18TH FLOOR  
200 NORTH THIRD STREET

P. O. Box 840  
HARRISBURG, PENNSYLVANIA 17108-0840

TELEPHONE  
(717) 236-3010  
TELEFAX  
(717) 234-1925

ORIGINAL

1026

COUNSEL  
DAVID C. EATON  
JOHN C. SULLIVAN  
DIRECT E-MAIL ADDRESS  
NSSH@REDROSE.NET

SPENCER G. NAUMAN, JR.  
J. STEPHEN FEINOUR  
CRAIG J. STAUDENMAIER  
BENJAMIN C. DUNLAP, JR.  
DENNIS E. BOYLE

August 16, 1999

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Room 206, North Office Building  
Harrisburg, PA 17105-3265

DOCUMENT  
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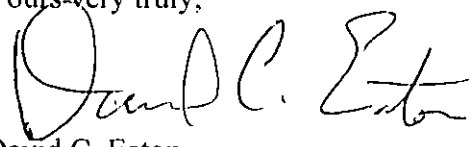
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99 AUG 19 AM 8:27

Re: Application Docket No. A-00111016

Dear Secretary McNulty:

We enclose herewith a copy of the Decision of the Surface Transportation Board received over the Internet refusing the Petition for Reconsideration filed on behalf of Friends of the Atglen-Susquehanna Trail and terminating the Section 106 process. This Decision is pertinent to the decision of the Commission under Application Docket No. 00111016, in that absent an appeal from the decision, it will enable the parties to go forward with the obligations imposed by the Commission's Order as affirmed by the Commonwealth Court, No. 3003 C.D. 1997.

Yours-very truly,



David C. Eaton

DCE/jai  
Enclosure

cc: ALJ Louis G. Cocheres, w/enc. of STB Decision  
cc: Parties of Record

P.S. to Parties of Record: Most parties will have received a copy of the Decision. For those who require a copy, please advise and we will provide it.

DCE

SRB

**Case**

**Docket No.**  
AB 167 1095 X

**Title**  
CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--LANCASTER AND CHESTER COUNTIES, PA

**Decision Summary**

(1) DENIED THE PETITION FOR RECONSIDERATION BY FRIENDS OF THE ATGLEN-SUSQUEHANNA TRAIL, INC., (2) TERMINATED THE SECTION 106 PROCESS AND (3) REMOVED THE PREVIOUSLY IMPOSED HISTORIC PRESERVATION CONDITION, AS MODIFIED.

**Download Files**

**WP Envoy (requires viewer)**

**WordPerfect**

**Graphics/Maps/Figures:**



- 30264.evy



- 30264.wpd

071027

**Full Text of Decision**

30264

SERVICE DATE - AUGUST 13, 1999

EB

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION(1)

--ABANDONMENT EXEMPTION--

LANCASTER AND CHESTER COUNTIES, PA

Decided: August 6, 1999

**DOCKETED**

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This decision denies a petition for reconsideration of our decision served October 2, 1997, in this proceeding filed by a group called the Friends of the Atglen-Susquehanna Trail, Inc. (FAST). The decision also terminates the section 106 process of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA), removes a stay condition we previously imposed on Consolidated Rail Corporation (Conrail) with regard to certain designated historic resources, and imposes appropriate conditions to mitigate harm to those resources.

**BACKGROUND**

On October 3, 1989, Conrail filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 66.5 miles of track called the Enola line in Lancaster and Chester Counties, PA. By decision served February 22, 1990, our predecessor agency, the Interstate Commerce Commission (ICC), imposed a historic preservation condition that required Conrail to retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the section 106 process of NHPA.(2) The purpose of this "stand still" condition(3) was to permit appropriate

mitigation to be devised for these bridges. SEA then began negotiations with the Pennsylvania Bureau of Historic Preservation (SHPO) and Conrail, seeking to reach an agreement on mitigation measures.

More than 6 years after the notice of exemption was filed, on April 15, 1996, while these mitigation efforts were continuing, FAST filed a petition seeking to reopen the proceeding.<sup>(4)</sup> Specifically, FAST requested that we broaden the historic preservation condition previously imposed so that it would apply to the entire property as a linear resource, rather than applying only to the bridges on the line. To justify reopening, FAST included material it called new information, consisting of a letter<sup>(5)</sup> dated February 24, 1994, from the Director of the Pennsylvania Bureau of Historic Preservation, Brenda Barrett, to Wendy Tippetts of "TWO."<sup>(6)</sup> In that letter, Ms. Barrett expressed a different position from the official position taken before the ICC in 1989, stating that the entire Enola Branch line was eligible for listing in the National Register of Historic Places. As noted above, the SHPO's original concern was limited to the bridges on the Enola Branch.

By decision served October 2, 1997, we denied FAST's petition, stating that we would not broaden the previously imposed condition at that late date. We noted (slip op. at 2) that "[n]either FAST nor the SHPO has provided any justification for the SHPO's apparently changed position with regard to eligibility of the entire line in the National Register."

We determined that expanding the historic preservation condition was unjustified and would only add further delay to the process. The Board, however, modified the original condition imposed by the ICC so that it would apply only to those bridges that had been determined by the SHPO as eligible for listing in the National Register and to potential archaeological sites near certain bridges, as noted in the SHPO's September 4, 1991 letter to J. Mikowychok of the Lancaster County Department of Parks and Recreation.<sup>(7)</sup>

On October 24, 1997, FAST filed a petition for reconsideration of the Board's decision not to reopen the proceeding to expand the historic preservation condition so as to preserve the entire line. FAST argues that "the subject rail line is a resource of national significance which is in imminent danger of being lost unless the Board takes action." FAST maintains that, at the time the SHPO made its initial determination concerning the eligibility of certain bridges, it did not have before it the information necessary to make an eligibility determination as to the entire line. Conrail replied, claiming that FAST has submitted no new evidence justifying reconsideration.

Early in 1998, SEA, after extensive negotiations and consultations with Conrail and the SHPO, developed a proposed Memorandum of Agreement (MOA) concerning mitigation for certain bridges. Under the terms of the proposed MOA, Conrail would be required to document (to state standards) certain bridges, which would then be removed pursuant to an order of the Pennsylvania Public Utility Commission (PUC).<sup>(8)</sup> In addition, Conrail would fund and furnish materials for a display relating to the Enola Branch line in a transportation museum administered by the SHPO.<sup>(9)</sup>

By letters dated December 14, 1998, SEA submitted the proposed MOA, together with supporting data required by 36 CFR 800.8, to the Advisory Council on Historic Preservation (ACHP or Council) and to the SHPO in order to obtain their comments and continue consultations on avoiding or reducing effects on historic properties. In addition, SEA circulated the draft MOA to FAST and the Historic Preservation Trust of Lancaster County (the MOA was also made available by SEA to any other group that may have had an interest in evaluating the provisions of the agreement) for their review and comment pursuant to 36 CFR 800.5(e)(1). SEA expressed its intention to incorporate timely comments from ACHP, the SHPO, and any interested party, as appropriate. SEA also advised that further consultation could be terminated if it appeared that consultation would be unproductive.

By letter dated January 13, 1999, ACHP acknowledged receipt of SEA's December 14, 1998 letter appending the proposed MOA, but claimed that issues concerning identification of historical properties remained outstanding. ACHP--citing 36 CFR 800.4(c)(1) of its regulations, which provides that "the passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible"--maintained that we are required to open the case to

identify additional properties as historic, including a determination on the historical significance on the entire Enola Branch line. Moreover, ACHP contended that "serious shortcomings" existed in our section 106 process, especially with regard to the public's involvement with the process, and that more information, as well as a meeting to be scheduled by the Board with the SHPO, Conrail, and ACHP participating, was needed before the Council could engage in a meaningful review of the undertaking.

On February 1, 1999, SEA responded to ACHP's January 13, 1999 letter, stating that SEA had already undertaken and completed an extensive process, including ample public notice and opportunities for public participation, to identify historic resources involved in the proposed abandonment. SEA noted that the identification phase of the section 106 process had been completed and that the Board was now properly engaged in the mitigation phase of the process. SEA also noted that ACHP's own regulations regarding re-evaluation of properties after the passage of time, quoted above, are permissive, not mandatory, as are the Board's regulations on reconsideration. SEA concluded by stating that comments from ACHP regarding mitigation would be welcomed and thoroughly considered.

By letter dated February 26, 1999, ACHP responded that SEA had "failed to clarify why the properties within the area of potential effect should be viewed as discrete historic properties rather than as a rail line with contributing elements." ACHP also stated that it had referred the matter to the Keeper of the National Register of Historic Places for a determination on whether the properties at issue are eligible for listing in the National Register.<sup>(10)</sup> In addition, ACHP renewed its request for more background information and argued that "any further efforts on the part of the [Board] to finalize the current draft Memorandum of Agreement will be in violation of the statutory and regulatory requirements of Section 106."

#### DISCUSSION AND CONCLUSIONS

We will deny FAST's petition for reconsideration. A petition for reconsideration must be supported by a showing of material error or that the prior action will be materially affected because of new evidence or changed circumstances. 49 CFR 1115.3(b). Petitioner has not made the required showing here.

FAST's attempts to explain the SHPO's apparent change of position on the eligibility of the entire line in the National Register and its submission of one new exhibit--a letter from the Curator of Transportation of the National Museum of American History to Randolph Harris of the Historic Preservation Trust of Lancaster County, PA--do not amount to changed circumstances or new evidence sufficient to warrant our reconsideration of this matter. The additional testimonial about how this right-of-way could be used for trail purposes is clearly not a changed circumstance or new evidence: that material could have been presented earlier. In any event, the Curator carefully states that he takes ". . . no formal position . . ." here. Thus, we cannot give substantial weight to this statement.

FAST has re-submitted the February 24, 1994 letter from the SHPO to Ms. Tippetts. That letter was already disposed of in our October 2 decision. FAST has not explained the apparent discrepancy between that letter and the SHPO's official position before the ICC on this matter. The SHPO never modified that position--that its concern was limited to bridges--by filing a petition with us asking for the entire line to be identified as historic. Indeed, a letter sent to Conrail as late as January 27, 1998, confirms that the SHPO's concerns were still limited to bridges and that the SHPO would not broaden its original position.<sup>(11)</sup>

Similarly, the Keeper's recently submitted pro forma statement that the entire line is historic does not justify reopening of the ICC's 1990 administratively final decision completing the identification phase. The ICC's decision was based on an agreement between the SHPO and SEA about the properties that should be protected, i.e., certain bridges. Under these circumstances, to restart the process now to address mitigation for the entire line would add inexcusable delay to a process that has already taken much too long.

FAST has not shown material error in our October 2, 1998 decision. Although FAST refers to various provisions of the Code of Federal Regulations, FAST does not indicate that any of these provisions have

been violated here. In fact, as discussed below, all applicable laws and regulations have been satisfied. Accordingly, we have no grounds for modifying our previous decision denying FAST's petition, and we will not do so.

We will also terminate the section 106 process and remove the historic preservation condition. Section 106 requires the agency to "take into account" the effect of its licensing decisions on properties included in or eligible for inclusion in the National Register of Historic Places and to afford ACHP a reasonable opportunity to comment.<sup>(12)</sup>

Our regulations<sup>(13)</sup> are designed to strike a balance between the section 106 process and our own regulatory programs. In revising the environmental rules in 1991, the ICC noted that the historic consultation process had become "unduly burdensome and not particularly efficacious in ICC proceedings . . ." Implementation of Environmental Laws, 7 I.C.C.2d 807, 826 (1991) (Implementation). The ICC also observed that:

Where historic property is involved, our ability to protect it is very limited. . . . We do not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the deed, as a condition to obtaining abandonment . . . authority. Nor can we deny . . . approval of a transaction solely on the ground that it would adversely affect historic resources. Thus, as a practical matter, documentation of the historic resources involved in the proposal under review . . . is the only form of nonconsensual mitigation available to us. . . . Any attempt to either preclude or force a railroad to sell (or donate) its property for a non-rail purpose, as a condition to obtaining abandonment . . . authority, would plainly constitute an unauthorized taking under the Fifth Amendment."

Id. at 828-29.

We have met our section 106 obligations within the limits of our conditioning authority here. The ICC, in consultation with the SHPO, first identified historic properties on the Enola Branch line. After completion of this identification step, and again in consultation with the SHPO, the ICC determined that abandonment would result in an adverse effect on the historic properties.<sup>(14)</sup> SEA then consulted extensively with the SHPO and Conrail, in accordance with 36 CFR 800.5(e)(4), to seek ways to avoid or reduce these adverse effects. Although these mitigation efforts did not result in the formal MOA which it sought,<sup>(15)</sup> SEA was able to fashion an arrangement with Conrail whereby appropriate historical preservation mitigation measures for the bridges will be achieved. These measures, set forth in the appendix to this decision and which we will impose as conditions,<sup>(16)</sup> provide, among other things, that Conrail will perform recordation of five bridges to State Level Recordation Standards and also provide funding for the development of an interpretive display outlining the history of the Enola Branch.

In addition, SEA submitted the proposed MOA to the Council, and requested its comments, pursuant to ACHP regulations at 36 CFR 800.5(e)(6).<sup>(17)</sup> Rather than provide input relevant to this stage of the section 106 process, however, ACHP responded by submitting letters raising questions concerning the "identification phase" of the section 106 process, even though that phase was completed years ago and reopening of that process has not been justified here. The Council has been provided with ample opportunities to submit comments relevant to the sole remaining environmental issue--appropriate mitigation of the previously identified adverse effects of the abandonment. But ACHP has declined to submit substantive comments at this time because it questions the conclusions reached many years ago during the identification phase.

It is evident that consultation with ACHP has reached an impasse, and that it would be fruitless to pursue this matter further with it. The "stand still" historic preservation condition that the ICC originally imposed in this case has been in place for over 10 years. Despite a great deal of work to resolve differences among concerned parties, these differences have not been resolved. In spite of our efforts to involve ACHP in the current phase of the section 106 process--the mitigation of adverse effects on

previously identified historical properties--ACHP will not respond on this topic and instead continues to seek to dictate the Board's procedures and compel us to reopen this case and declare this entire rail line historic.<sup>(18)</sup> Rather, having determined that further consultation would be fruitless in this matter, we will terminate the section 106 consultation process. We will treat the Council's letters of January 13, 1999, and February 26, 1999, as its comments and recommendations on the undertaking. We have taken these comments into account, and the section 106 process is now complete.

We have fully complied with NHPA, including extensive consultations with the appropriate parties to ensure that all effects from the proposed abandonment on historic resources have been taken into account. We have examined the proposed MOA and believe it constitutes appropriate historic mitigation for the bridges at issue, and we will impose that proposed MOA as a condition in this decision.

We have furnished both FAST and Lancaster County with copies of the draft MOA. Although they have declined to comment, it is clear that we have provided ample opportunity for interested parties to participate. These entities, which are on our service list, will receive copies of this decision.

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

It is ordered:

1. The petition for reconsideration filed by FAST is denied.
2. The section 106 process is terminated and the previously imposed historic preservation condition, as modified, is removed.
3. Conrail shall comply with the terms of the proposed MOA, attached as the appendix to this decision.
4. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams

Secretary

APPENDIX  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE SURFACE TRANSPORTATION BOARD  
AND  
THE PENNSYLVANIA STATE HISTORIC

PRESERVATION OFFICE  
SUBMITTED TO  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
PURSUANT TO 36 CFR 800.5(e)(4)  
REGARDING  
ABANDONMENT OF CONRAIL ENOLA LINE  
LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA

WHEREAS, on October 3, 1989, Consolidated Rail Corporation (Conrail) filed a Notice of Exemption, designated Docket No. AB-167 (Sub-No. 1095X), with the Interstate Commerce Commission (ICC) pursuant to 49 CFR 1152.50, to abandon a line of railroad in Lancaster and Chester Counties, Pennsylvania;

WHEREAS, on November 1, 1989, the ICC served its Environmental Assessment, which noted that the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470, had not been completed because the Pennsylvania Historical and Museum Commission (the designated State Historic Preservation Officer for the Commonwealth of Pennsylvania) (SHPO) had not completed its review of the bridges on the line;

WHEREAS, by letter dated December 12, 1989, SHPO identified 33 bridges on the line as eligible for listing in the National Register;

WHEREAS, by decision served February 22, 1990, the ICC imposed a condition on the abandonment prohibiting Conrail from taking steps to alter the historic integrity of the bridges on the line pending completion of the Section 106 process;

WHEREAS, on September 24, 1993, Conrail filed with the Pennsylvania Public Utility Commission (PUC) an application to abolish the various rail-highway crossings on the abandoned line;

WHEREAS, the PUC held various hearings and conferences and authorized mediation with Conrail and representatives of the public, including Friends of the Atglen-Susquehanna Trail (FAST), concerning efforts to preserve the historic bridges on the abandoned line;

WHEREAS, within the context of the PUC proceeding and as a result of mediation, settlement agreements were reached between Conrail and the Pennsylvania Department of Transportation (PennDOT) and between Conrail and the Townships of West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic and Conestoga;

WHEREAS, pursuant to the settlement agreements with the Townships and PennDOT which were approved and adopted by the PUC, Conrail will convey segments of the abandoned rail line to the Townships through which each segment passes, the Townships will assume future ownership and maintenance responsibility for the line and the crossing structures, Conrail will contribute an agreed sum of money to the Townships for future maintenance of the crossing structures which are to remain in place, and certain other crossing structures, deemed to constitute serious highway safety hazards, will be removed;

WHEREAS, on October 9, 1997, the PUC ordered that the various rail-highway crossings on the abandoned line be closed and that a number of bridges deemed to constitute serious safety hazards be removed, including five bridges previously identified by the SHPO as eligible for inclusion in the

Federal Register;

WHEREAS, the PUC ordered that an additional eligible bridge should be removed only if Penn DOT does not within 2 years let a contract to realign Marticville Road (SR 324), which passes beneath the bridge, and PennDOT has agreed to provide for realignment of that road to bypass the bridge;

WHEREAS, the five eligible bridges to be removed were identified by the PUC as Bridge Numbers 2 (Orchard Buck Road, at railroad milepost 4.70), 10 (Pumping Station Road, at railroad milepost 11.68), 15 (Oak Bottom Road, at railroad milepost 14.46), 16 (U.S. Route 222, at railroad milepost 14.62), and 21 (Hollow Road at railroad milepost 18.08);

WHEREAS, the Surface Transportation Board (STB), successor to the ICC, has determined, in consultation with SHPO, that closing the rail-highway crossings as ordered by the PUC will have an adverse effect on the five eligible bridges to be removed, and removal of the bridges will result in loss of the Enola Line (also sometimes called the Low Grade Line) right-of-way as a linear resource;

WHEREAS, opportunities to comment have been afforded to the public and to interested parties, and include opportunities afforded in connection with the development of the ICC's Environmental Assessment served on November 1, 1989; the various hearings, conferences and mediation sessions held or sponsored by the PUC; a public meeting held in Providence Township on December 29, 1997, pursuant to newspaper advertisement and mail notice to known interested parties; and a meeting held at the offices of the SHPO on January 13, 1998, at the request of the Historic Preservation Trust of Lancaster County (HPT) which invited the following parties to participate in the meeting: Lancaster County Planning Commission, FAST, Lancaster County Conservancy, Preservation Pennsylvania, Pennsylvania Historical and Museum Commission, National Trust for Historic Preservation, Advisory Council on Historic Preservation, Lancaster Chapter of Sierra Club, Lancaster Greens, Chesapeake Bay Foundation, Citizens for Responsible Growth, U. S. Army Corp of Engineers, and Conrail;

WHEREAS, interested parties commenting on the proposal at these meetings included HPT, Preservation Pennsylvania, FAST, PennDOT, a supervisor of Martic Township, representatives of Providence and Conestoga Townships, and a resident of West Salisbury Township;

WHEREAS, by letter dated January 27, 1998, SHPO recommended that appropriate mitigation for the adverse effects would be recordation of the five bridges to be removed to State Level Recordation Standards and development of an interpretative display outlining the history of the line for placement in the Pennsylvania Railroad Museum;

WHEREAS, the Pennsylvania Railroad Museum has recommended that an appropriate display would be a 6 - to - 8 minute video, which could be produced at a cost of \$15,437.00;

WHEREAS, the STB only has power to require documentation as mitigation (Implementation of Environmental Laws, 7 I.C.C. 2d 807, 829 (1991)), but a railroad applicant may consent to provide additional mitigation;

WHEREAS, STB and SHPO have invited Conrail to become a consulting party pursuant to 36 C.F.R. 800.1(c)(2)(ii), in order to advance the objectives of Section 106, and to concur in this MOA;

WHEREAS, notwithstanding the provisions of 49 CFR 1105.8(f) that a historic condition in an abandonment case normally will not extend beyond the 330-day statutory time period for abandonment proceedings, Conrail is willing to become a consulting party, to concur in this MOA, to provide recordation of the five bridges to State Level Recordation Standards, and to provide funding of \$15,437.00 for the proposed display to be developed for placement in the Pennsylvania Railroad Museum.

NOW, THEREFORE, STB and SHPO agree that the following stipulations shall be implemented in order to take into account the effects of the rail line abandonment on historic properties.

## STIPULATIONS

A. The STB shall insure that Conrail will perform recordation of the five bridges identified as bridge numbers 2, 10, 15, 16 and 21 to State Level Recordation Standards prior to demolition of the bridges.

B. The STB shall insure that Conrail will comply with the terms of its agreement to provide funding in the amount of \$15,437.00 to the Railroad Museum of Pennsylvania for development of a public, interpretative display outlining the history of the Enola Line.

C. Administrative Conditions:

1. Any party to this MOA may propose to the STB that it be amended, whereupon the STB will consult with the other parties in accordance with 36 CFR 800.5(e)(5).

2. Should the STB determine that it cannot implement the terms of this MOA or should the SHPO determine that this MOA is not being properly implemented, the STB or the SHPO may propose that this MOA be terminated, explaining the reasons for termination, and suggesting consultation. If after 30 days no agreement is reached, the STB may terminate this MOA by notifying all parties, and shall consult in accordance with 36 CFR 800.5(e)(4) or request comments of the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.6(b).

3. This MOA shall remain in effect until completion of recordation of the five bridges as provided in Stipulation A and the provisions of funding by Conrail for development of a public display as provided in Stipulation B, or until 330 days from the date of execution hereof, whichever shall first occur.

D. Completion of Process

1. Execution of this MOA by the STB and the SHPO, its acceptance by the Council pursuant to 36 CFR 800.6(a)(1),(i) or (ii) or further comments by the Council pursuant to 36 CFR 800.6(a)(1)(iii), and implementation of its terms, shall determine that the STB has afforded the Council an opportunity to comment on the abandonment of the Enola Line and its effects on historic properties, and that the STB has taken into account the effects of the line abandonment on historic properties.

2. Upon acceptance of this MOA by the Council, the furnishing of comments by the Council pursuant to 36 CFR 800.6(a)(2) and consideration of those comments pursuant to 36 CFR 800.6(c)(2), the furnishing of Council views pursuant to

36 CFR 800.6(e)(1), or termination of this MOA, the Section 106 process as it pertains to abandonment of the Enola Line shall be completed.

1. By decision served July 23, 1998, we approved, subject to certain conditions, the acquisition of control of Consolidated Rail Corporation (Conrail), and the division of Conrail's assets, by CSX Corporation and CSX Transportation, Inc. (jointly, CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (jointly, NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). CSX and NS effected control of Conrail on August 22, 1998, and they effected the division of Conrail's assets on June 1, 1999.

2. The Section of Environmental Analysis (SEA) (then known as the Section of Energy and Environment) issued an Environmental Assessment (EA) on November 1, 1989. In the EA, SEA stated that "[t]he Pennsylvania Historical and Museum Commission has not yet completed its review of the 83 bridges found on the line that may be potentially eligible for inclusion in the National Register of Historic Places. This was based on a phone conversation of October 25, 1989 with the Pennsylvania State Historic Preservation Officer." As a result of this consultation, the review of potentially eligible historic sites focused solely on the bridges located on the Enola Branch. SEA then recommended

imposition of a condition limited to preserving these bridges until appropriate mitigation could be determined, and that condition was imposed by the ICC in the decision served February 22, 1990.

This condition amounts to a temporary stay relating to certain bridges that provides time for the identification of historic properties and permits the evaluation of various mitigation alternatives. It is thus not a substantive condition and does not permit us to later convert the abandoned right-of-way into a trail against the railroad's wishes, which apparently has become the goal of FAST.

3. The ICC also imposed public use and interim trail use conditions and permitted Conrail, subject to these conditions, to salvage track and material from the line. The decision provided that, if no interim trail use agreement was reached, Conrail was authorized to completely abandon the line. By decision served April 19, 1993, the trail use condition was vacated, and Conrail was permitted to abandon the line. That decision made no reference to the previously imposed historic preservation condition, which remained in effect.
4. Conrail had by this time taken a number of steps to comply with the section 106 process, including submitting various maps to the SHPO on January 30, 1990. The SHPO acknowledged receipt of the maps by letter to Conrail on March 5, 1990, and added that it would "advise you shortly what additional archaeological survey would be required if the bridges were to be removed." The record does not indicate that the SHPO provided Conrail with any further identification of archaeological sites.
5. Although the ICC was sent a copy of this letter in February 1994, Conrail apparently was not notified of it.
6. This organization is not further identified. Ms. Barrett also sent a virtually identical letter on April 19, 1994, to a Mr. Mike Keiser of the Pennsylvania Department of Transportation.
7. The historic preservation condition now states: "Conrail shall retain its interest in and take no steps to alter the historic integrity of the thirty-two bridges eligible for the National Register and the potential archaeological sites near thirty-six of the bridges."
8. On September 24, 1993, Conrail filed an application with the PUC to abolish the rail-highway crossings on the line. The PUC held a number of hearings, and eventually ordered that Conrail attempt to mediate with members of the public and FAST concerning efforts to preserve historic bridges on the line. The mediation resulted in settlement agreements between Conrail and a number of townships. Conrail was to convey segments of the line to the townships through which the segment passed. The townships were to assume future ownership and maintenance responsibility for the line and bridges and Conrail was to contribute money for maintenance of bridges that were to remain in place. Some bridges, deemed to present highway safety hazards, were to be removed. On October 9, 1997, the PUC ordered that the rail-highway crossings on the line be closed and that bridges determined to present serious safety hazards, including five identified as historic, be removed. We understand that the PUC decision has been appealed. Conrail has yet to remove the bridges while the historic preservation condition remains outstanding.
9. Conrail, in a letter dated August 4, 1998, to the SHPO, enclosed a copy of the MOA, which had been signed by the Chief of SEA, and stated in the letter that the MOA was acceptable to Conrail. Conrail also indicated it would sign the MOA as soon as it received a signed copy thereof from the SHPO.
10. On April 16, 1999, the Keeper of the National Register issued a one page form entitled, "Determination of Eligibility Notification." The form set forth in one paragraph the Keeper's conclusion, based on the request of ACHP, that:  
  
the entire Enola Branch Line is eligible for the National Register of Historic Places for its historic and engineering significance. . . . The Enola Branch Line differed from other railroads of the period in that it was designed to have no contact with other vehicular routes, and it was to run almost completely level and in a straight line.

11. The SHPO also acknowledged in this letter, which the SHPO copied to both ACHP and FAST, that "... the next step in the Section 106 process is the preparation of a Memorandum of Agreement . . . ."

12. Regulations implementing section 106 at 36 CFR part 800 involve a number of steps. First, the agency responsible for the licensing decision must identify historic properties that may be affected by an undertaking. The agency bases this determination on background information, which could include surveys or field studies, and consultation with the appropriate SHPO. Second, if the agency identifies historic properties, it must assess what effect its licensing decision will have on the properties -- no effect, no adverse effect, or an adverse effect. Third, if the effect is adverse, the agency must attempt to find ways to mitigate the harm to historic properties. This involves consulting with the SHPO and others in an effort to develop an MOA that outlines mitigation measures that the agency will take to minimize or avoid harm to the properties.

If an MOA is executed--that is, agreed upon and signed by the agency, SHPO, and ACHP--the agency may then issue its license in compliance with the terms of the MOA. If, on the other hand, there is no MOA, and consultation has become unproductive, the agency, SHPO, or ACHP may terminate the consultation process. The agency must then submit documentation to ACHP, request its written comments, and then take these written comments into account in deciding if and how to proceed.

13. See 49 CFR 1105.8.

14. We note that the SHPO has acknowledged that the first two steps of the process were completed in 1994. In two separate letters dated April 10, 1996, and April 12, 1996, attached, respectively, as Exhibits T and U to FAST's petition for reconsideration, the SHPO wrote:

Section 106 review is a three-step process involving identification, determination of effect and mitigation. The first two steps were completed with the [Pennsylvania Bureau of Historic Preservation] decisions on December 12, 1989 and October 17, 1994 which stated that there would be an adverse effect if bridges were altered or destroyed. The final section of the 106 review process, mitigation, has not been completed.

15. A formal MOA was not entered into because the SHPO, in spite of extensive discussions and apparent general agreement with its provisions, did not sign the draft MOA. As noted, various correspondence between the parties indicates that Conrail had agreed to comply with all of the provisions requested by the SHPO, and those provisions are incorporated into the conditions we are imposing here.

16. Although the Board's conditioning powers are generally limited to requiring appropriate documentation of historic rail property (see Implementation, at 830), we may impose this condition here because Conrail has voluntarily agreed to it.

17. By submitting the proposed MOA to ACHP, together with the supporting documentation, SEA provided the Council with all information concerning the undertaking specified in ACHP's regulations for terminating consultation, thus permitting the section 106 process to move forward without additional delay. This was appropriate in light of the fact that this proceeding is over 10 years old and that SEA had already undertaken and completed an extensive environmental process, including ample public notice and opportunities for public participation.

18. Even if we were to identify the line as historic at this late date, we would not and could not impose the relief FAST seeks, which is permanent preservation of the line as a historic trail. The section 106 process only involves the identification and preservation of records of the right-of-way here. It does not provide for the preservation of the right-of-way itself. The "stand still" historic preservation condition that the ICC originally imposed in this case is not a substantive condition--it is merely a temporary arrangement (albeit one which has been in place for over 10 years) to maintain the status quo while the section 106 process is completed. FAST wants to use this process to convert a temporary stay into a permanent one with the hope of turning the line into a trail. This is clearly more than merely expanding the original condition that related to certain bridges.

We note that unsuccessful negotiations to convert the rail right-of-way to a trail occurred over a period of 2 years between Conrail and Lancaster County. After these negotiations ended, FAST approached Conrail about acquiring the line for a trail. Conrail states that it was willing to convey the property to FAST, but FAST was unable to acquire certain guarantee agreements in order to satisfy PUC requirements.

LAW OFFICES  
NAUMAN, SMITH, SHISSLER & HALL, D.L.P.

ORIGINAL

18TH FLOOR  
200 NORTH THIRD STREET

P. O. Box 840

HARRISBURG, PENNSYLVANIA 17108-0840

TELEPHONE

(717) 236-3010

TELEFAX

(717) 234-1925

SPENCER G. NAUMAN, JR.  
J. STEPHEN FEINOUR  
CRAIG J. STAUDENMAIER  
BENJAMIN C. DUNLAP, JR.

DENNIS E. BOYLE

COUNSEL  
DAVID C. EATON  
JOHN C. SULLIVAN

DIRECT E-MAIL ADDRESS  
NSSH@REDROSE.NET

DOCUMENT  
FOLDER

October 18, 1999

HAND DELIVERED

James McNulty, Prothonotary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RE: **Application of Consolidated Rail Corporation for the abolition of thirty-one crossings of the Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County and Board of Supervisors of Bart Township v. Consolidated Rail Corporation and the Pennsylvania Department of Transportation and Commissioners of the County of Lancaster, et al. PUC Docket Nos. A-00111016 and C-00913256; Conrail File No. MPAC-486; Our file No. 12607.**

Dear Sir:

I enclose an original and three (3) copies each of a Motion to Request Extensions of Time for filing in the above matter. In accordance with the accompanying Certificate of Service we have provided copies of the Motion to all parties of record.

Please time-stamp the additional copy provided and return to our messenger.

Sincerely yours,

Barbara Drake, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

EEF

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SECRETARY'S BUREAU

/bmd

Enclosures

cc: All Parties of Record  
Randal S. Noe, Esquire  
C. T. Goewey

108

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated Rail Corporation for the abolition of thirty-one crossings of the Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County,

Docket No. A-00111016

Board of Supervisors of Bart Township,

v.

Docket No. C-0091326

Consolidated Rail Corporation, and the Pennsylvania Department of Transportation and Commissioners of the County of Lancaster, et al.

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MOTION TO REQUEST EXTENSIONS OF TIME

Consolidated Rail Corporation ("Conrail"), by and through its attorneys, Nauman, Smith, Shissler & Hall, LLP, files this Motion to Request Extensions of Time to perform certain work ordered in the Opinion and Order of the Public Utility Commission ("Commission") entered on October 9, 1997, in the above-referenced matter, pursuant to 52 Pa. Code § 1.15, based upon the following:

1. The Commission's Opinion and Order entered October 9, 1997, required Conrail to perform certain specified work at a number of the involved crossings, as summarized below and detailed in the referenced ordering paragraphs:

- a. Within one hundred twenty (120) days of the entry of the Opinion and Order, install fencing along the parapets of the bridge crossing Noble Road partly in West Sadsbury Township, Chester County, and Sadsbury Township, Lancaster County (Crossing No. 1), pursuant to Ordering Paragraph 22 on page 47.
- b. Within one (1) year of the entry of the Opinion and Order, remove:
  - (i) the structure at Oak Bottom Road in Providence Township (Crossing No. 15) pursuant to Ordering Paragraph 86 on pages 59-60;
  - (ii) the structure at U.S. Route 222 in Providence Township (Crossing No. 16), pursuant to Ordering Paragraph 92 on page 61;
  - (iii) the crossing at Hollow Road (West) in Providence Township (Crossing No. 21), pursuant to Ordering Paragraph 114 on pages 65-66.
- c. Within eighteen (18) months of the entry of the Opinion and Order, remove the transmission line towers of the National Railroad Passenger Corporation ("Amtrak") from the Martic Forge Bridge in Conestoga Township (Crossing No. 28) and resuspend the line, pursuant to Ordering Paragraph 149 on page 72.
- d. Within two (2) years of the entry of the Opinion and Order remove:

- (i) the structure at White Oak Road in Sadsbury Township (Crossing No. 4), pursuant to Ordering Paragraph 39 on page 50;
- (ii) the structure at Pumping Station Road in Eden Township (Crossing No. 10), pursuant to Ordering Paragraph 70 on page 56;
- (iii) the structure at Sigman Road in Providence Township (Crossing No. 26), pursuant to Ordering Paragraph 136 on pages 69-70.

2. Conrail was hindered in performing the work ordered by the Commission as summarized in paragraph one above due to the efforts of the Friends of the Atglen-Susquehanna Trail, Inc. ("FAST") to obtain a supersedeas of the Commission's Opinion and Order entered October 9, 1997, before the Commission, the Commonwealth Court and the Pennsylvania Supreme Court. The outstanding question as to whether supersedeas would be granted was finally determined by Order of the Pennsylvania Supreme Court dated June 28, 1999, at Docket No. 782 M.D. Allocatur Docket 1998, a true and correct copy of which is attached hereto as Exhibit "A".

3. Conrail was prevented from performing the ordered work at Crossings No. 10, 15, 16 and 21 pursuant to a Decision of the Interstate Commerce Commission ("ICC"), served February 22, 1990, which imposed an historic preservation condition that required Conrail to retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the Section 106 process of the National Historic Preservation Act ("NHPA"), 16 U.S.C. 470f. The 1990 decision of the

ICC was modified by Decision of the Surface Transportation Board ("STB"), served October 2, 1997, which modified the original stay condition imposed by the ICC so that it would apply only to those bridges which have been determined by the Pennsylvania Bureau of Historic Preservation ("SHPO") as being eligible for listing in the National Register and to potential archeological sites near certain bridges, as noted in the SHPO's September 4, 1991, letter to J. Mikowychok of the Lancaster County Department of Parks and Recreation and additional letter referred to therein. True and correct copies of the aforementioned ICC Decision, the STB Decision, and the SHPO letter and additional letter referred to therein are attached hereto as Exhibits "B", "C" and "D" respectively.

4. The stay conditions imposed in the 1990 ICC Decision, as modified by the 1997 STB Decision, which prevented Conrail from removing the structures at Crossings No. 10, 15, 16 and 21, remained in effect until a Decision of the STB served August 13, 1999, lifted the stay condition, pending compliance with the terms of the proposed Memorandum of Agreement between the STB and SHPO appended to the Decision. A true and correct copy of the STB's Decision served August 13, 1999, is attached hereto as Exhibit "E".

5. Due to the STB stay condition preventing Conrail from performing demolition of Crossings No. 10, 15, 16 and 21 and the uncertainty regarding Conrail's authority to perform work at any crossing while FAST's request for a supersedeas was

outstanding, Conrail requests the following extensions of time to perform the work ordered in the Commission's Opinion and Order entered October 9, 1997:

- a. An extension of time until April 30, 2000, to install fencing along the parapets of the bridge crossing Noble Road partly in West Sadsbury Township, Chester County, and Sadsbury Township, Lancaster County (Crossing No. 1), amending Ordering Paragraph 22.
- b. An extension of time until December 31, 2000, to remove the structure at U.S. Route 222 in Providence Township (Crossing No. 16), amending Ordering Paragraph 92.
- c. An extension of time until June 30, 2001, to remove Amtrak's transmission line towers from the Martic Forge Bridge in Conestoga Township (Crossing No. 28) and resuspend the line, amending Ordering Paragraph 149.
- d. An extension of time until December 31, 2001, to:
  - (i) remove the crossing structure at White Oak Road in Sadsbury Township (Crossing No. 4), amending Ordering Paragraph 39;
  - (ii) remove the crossing structure at Pumping Station Road in Eden Township (Crossing No. 10), amending Ordering Paragraph 70;
  - (iii) remove the crossing structure at Oak Bottom Road in Providence Township (Crossing No. 15), amending Ordering Paragraph 86;

- (iv) remove the crossing structure at Hollow Road (West) in Providence Township (Crossing No. 21), amending Ordering Paragraph 114;
- (v) remove the crossing structure at Sigman Road in Providence Township (Crossing No. 26), amending Ordering Paragraph 136.

6. Conrail recognizes that the crossing structure at U.S. Route 222 in Providence Township (Crossing No. 16) presents a particular potential public safety hazard and has addressed this potential hazard by requesting a more limited extension of time to remove this structure now that the STB Stay Order prohibiting removal of this and other structures has been lifted. FAST's own expert witness testified in the Commission proceedings that Crossing No. 16 should be removed because of inadequate clearances. (N.T. at 409-414; Prefiled Testimony of Charles A. Flick, Exhibit "B" at 33-36).

7. On June 1, 1999, the subject rail line was conveyed to Pennsylvania Lines LLC, a wholly owned subsidiary of Conrail. Norfolk Southern Railway Company has the right to operate on lines owned by Pennsylvania Lines LLC.

8. Conrail has asserted reasonable grounds for an extension of time to *perform the work ordered by the Commission in its Opinion and Order entered October 9, 1997*, and Conrail's request for extension of time is congruent with the public interest and safety.

9. *Counsel for the Pennsylvania Department of Transportation and the Townships of Martic, Conestoga, Sadsbury, Providence and Bart* have informed to the undersigned that their respective clients do not oppose the requests for extension of time contained herein.

WHEREFORE, Consolidated Rail Corporation moves that the Commission's Opinion and Order entered October 9, 1997, be amended to provide Conrail extensions of time to perform work as follows:

- a. An extension of time until April 30, 2000, to install fencing along the parapets of the bridge crossing Noble Road partly in West Sadsbury Township, Chester County, and Sadsbury Township, Lancaster County (Crossing No. 1), amending Ordering Paragraph 22.
- b. An extension of time until December 31, 2000, to remove the structure at U.S. Route 222 in Providence Township (Crossing No. 16), amending Ordering Paragraph 92.
- c. An extension of time until June 30, 2001, to remove Amtrak's transmission line towers from the Martic Forge Bridge in Conestoga Township (Crossing No. 28) and resuspend the line, amending Ordering Paragraph 149.
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- (i) remove the crossing structure at White Oak Road in Sadsbury Township (Crossing No. 4), amending Ordering Paragraph 39;
- (ii) remove the crossing structure at Pumping Station Road in Eden Township (Crossing No. 10), amending Ordering Paragraph 70;
- (iii) remove the crossing structure at Oak Bottom Road in Providence Township (Crossing No. 15), amending Ordering Paragraph 86;
- (iv) remove the crossing structure at Hollow Road (West) in Providence Township (Crossing No. 21), amending Ordering Paragraph 114;
- (v) remove the crossing structure at Sigman Road in Providence Township (Crossing No. 26), amending Ordering Paragraph 136.

Respectfully Submitted:

**NAUMAN, SMITH, SHISSLER & HALL, LLP**

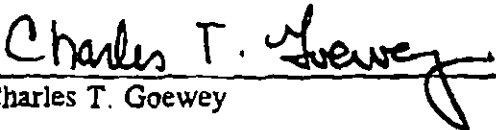
By *Benjamin C Dunlap, Jr.*  
Benjamin C. Dunlap, Jr., Esquire  
Supreme Court I.D. #66283

200 North Third Street, 18<sup>th</sup> Floor  
P.O. Box 840  
Harrisburg, PA 17108-0840  
(717) 236-3010  
Attorney for Consolidated Rail Corporation and  
Norfolk Southern Railway Company

Date: October 18, 1999

**VERIFICATION**

I, Charles T. Goewey, Chief Engineer, Bridges and Structures, of Norfolk Southern Railway Company in the foregoing proceeding, do state that I am authorized to make this statement on behalf of Norfolk Southern Railway Company and verify that I have read the attached Motion to Request Extensions of Time and that the within information is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 Pa.C.S. § 4905, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Charles T. Goewey

Date: October 18, 1999

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Application of Consolidated Rail Corporation for the abolition of thirty-one crossings of the Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County,</b>	:	
	:	
	:	<b>Docket No. A-00111016</b>
	:	
	:	
	:	
<b>Board of Supervisors of Bart Township,</b>	:	
	:	
	:	
<b>v.</b>	:	<b>Docket No. C-00913256</b>
	:	
	:	
<b>Consolidated Rail Corporation, and the Pennsylvania Department of Transportation and Commissioners of the County of Lancaster, et al.</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of Consolidated Rail Corporation's Motion to Request Extensions of Time have been served upon the persons named and in the manner indicated below:

**BY HAND DELIVERED:**

Honorable Louis G. Cocheres  
Administrative Law Judge  
North Office Building  
Harrisburg, PA 17120

**BY FIRST CLASS MAIL:**

Scott T. Wyland, Esquire  
Malatesta, Hawke & McKeon  
100 North 10<sup>th</sup> Street  
P. O. Box 1778  
Harrisburg, PA 17105

Gina M. D'Alfonso, Esquire  
Assistant Counsel-in-Charge  
PennDOT  
555 Walnut Street  
9<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1900

**RECEIVED**  
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PENNSYLVANIA  
SECRETARY'S BUREAU

David A. Salapa, Esquire  
PA PUC, Legal Division  
Bureau of Transportation & Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

H. Joseph Little, Chairman  
Eden Township Board of Supervisors  
489 Stony Hill Road  
Quarryville, PA 17566

Joseph J. Kenna, Commissioner  
Karen L. Martynic  
Chester County  
2 N. High Street, Suite 512  
West Chester, PA 19380

Dennis M. Moore  
National Railroad Passenger  
Corporation (AMTRAK)  
60 Massachusetts Avenue, NE  
Washington, DC 20002

Kenneth Zielonis, Esquire  
Stevens & Lee  
208 N. 3rd Street, Suite 310  
P. O. Box 12090  
Harrisburg, PA 17108

H. Joseph Little, Chairman  
Eden Township Board of  
Supervisors  
489 Stony Hill Road  
Quarryville, PA 17566

Brian MacEwen  
Assistant Director of  
City Authority  
114 E. Lincoln Highway  
Coatesville, PA 19320

Martha R. Smith, Esquire  
DER-Legal Services  
P. O. Box 8464  
Harrisburg, PA 17105-8464

Joyce A. Nettke, Esquire  
Douglas Brossman, Esquire  
FAST  
P. O. Box 27  
Strasburg, PA 17579

Thomas Whiteman, Esquire  
Chester County Courthouse  
2 North High Street, Suite 7  
West Chester, PA 19380-3070

John S. Halsted, Esquire  
W. Sadsbury Twp. Solicitor  
2 North High Street  
Courthouse, Suite 7  
West Chester, PA 19380

James Landis  
W. Sadsbury Township  
R.D. #1, Box 404  
Parkesburg, PA 19365

John Chase  
Quarryville Water Auth.  
300 Saint Catherine St.  
Quarryville, PA 17566

John Filipowicz, Esquire  
C-TEC Corporation Counsel  
Legal Department  
105 Carnegie Center  
Princeton, NJ 08540

Robert Chambers  
Susan Hinbach  
Suburban Cable Company  
1131 S. Duket Street  
P. O. Box 120  
Lanchaster, PA 17608

Brian P. Novac, Engineer  
Conrad, O'Brien, Gellman & Rohn  
11-13 South High Street  
West Chester, PA 19382

Office of Special Assistants  
Room 210  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Roger Fickes, Director  
Bureau of State Parks  
Department of Environmental Resources  
P. O. Box 8551  
Harrisburg, PA 17105-8551

Thomas L. Whiteman, Esquire  
Solicitor's Office  
Chester County Court House  
2 North High Street, Suite 7  
West Chester, PA 19380-3070

John Chase  
Quarryville Water Authority  
300 Saint Catherine Street  
Quarryville, PA 17566

Daniel Mylin, Borough Manager  
Barbara Tollinger, Secretary  
Borough of Quarryville  
330 St. Catherine Street  
Quarryville, PA 17566

David Dulick  
PA Power & Light  
2 North Ninth Street  
Allentown, PA 18101

Samuel Morris, Vice Pres.  
Legal Department  
Suburban Cable Company  
202 Shoemaker Rd.  
Pottstown, PA 19464

Christopher Arfaa, Esquire  
Bell Atlantic-PA, Inc.  
Law Department  
1717 Arch Street  
Floor 32N  
Philadelphia, PA 19103

Brian MacEwen  
Coatesville Water Authority  
114 East Lincoln Highway  
Coatesville, PA 19320

Samuel Morris, Vice President  
Legal Department  
202 Shoemaker Road  
Pottstown, PA 19464

Nicholas Yoder, Chairman  
Sadsbury Township  
1077 White Oak Road  
Christiana, PA 17509

John Wiker, Chairman  
Conestoga Township Supervisors  
46 Quarry Road  
Quarryville, PA 17566

William T. Keen, Esquire  
Keen, Keen & Good  
One Bondsville Road  
Downington, PA 19355

Frank Peiffer, Chairman  
Martic Township  
370 Steinman Farm Rod  
Pequea, PA 17565

Melvin E. Newcomer, Esquire  
Providence Township  
339 North Duke Street  
P. O. Box 539  
Lancaster, PA 17603

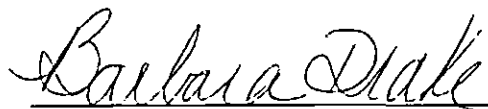
Carol K. Palmonski  
Lancaster County  
Planning Commission  
50 North Duke Street  
Lancaster, PA 17608

Ray Marvin, Chairman  
Bart Township Supervisors  
46 Quarry Road  
Quarryville, PA 17566

James H. Thomas, Esquire  
Blakinger, Blyer & Thomas, PC  
28 Penn Square  
Lancaster, PA 17603

Gerald Duvall, Chairman  
Providence Twp. Supervisors  
216 Clearfield Road  
New Providence, PA 17509

William C. Crosswell, Esquire  
Morgan, Hallgren,  
Crosswell & Kane, P.C.  
700 North Duke Street  
Lancaster, PA 17604-4686



---

Barbara Drake, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

Dated: October 18, 1999



FEB 22 1990

## INTERSTATE COMMERCE COMMISSION

## DECISION

Docket No. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--  
LANCASTER AND CHESTER COUNTIES, PA

Decided: February 14, 1990

We are: (1) rescinding a stay previously imposed in this proceeding; (2) denying a separate stay request; (3) revoking the notice of exemption to the extent necessary to permit negotiations for trail use/rail banking; (4) imposing public use, salvage, and historic preservation conditions; and (5) establishing a procedural schedule for the submission of an offer of financial assistance.

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152, Subpart F - Exempt Abandonments, to abandon approximately 66.5 miles of track called the Enola line in Lancaster and Chester Counties, PA. The line extends between the clearance point of the switch to Green Giant in Parkersburg, near milepost 1.1, and its connection to the Port Road Branch at CP "Port" in Manor Township, near milepost 33.7 (approximately 32.6 miles), and between its connection to Amtrak at CP "Park" in Parkersburg, near milepost 0.0, and its connection to the Port Road Branch at CP "Port" in Manor Township, near milepost 33.9 (approximately 33.9 miles). A notice of exemption was published in the Federal Register on October 23, 1989 (54 Fed. Reg. 43207). The exemption was scheduled to become effective on November 22, 1989, but its effective date was extended to December 1, 1989, due to the filing of a formal expression of intent to file an offer of financial assistance (OFA) by Southeastern Pennsylvania Transportation Authority (SEPTA) on November 2, 1989.<sup>1</sup>

On November 2, 1989, Lancaster County (Lancaster or County) filed a request<sup>2</sup> for a public use condition under 49 CFR 1152.28 and a statement of willingness to assume financial responsibility for the right-of-way pursuant to the Commission's regulations at 49 CFR 1152.29 (Trails Act rules). On November 13, 1989, the Department of Defense (DOD) filed a petition for reconsideration of the notice of exemption arguing that it may be void ab initio since, contrary to Conrail's assertions, it may not be possible

<sup>1</sup> By letter filed November 20, 1989, Conrail requested an extension of time, until December 5, 1989, to respond to SEPTA's oral request that it provide the OFA information required by 49 CFR 1152.27(a). Conrail acknowledged that its request would automatically toll the time period for submitting an OFA. In light of the December 1, 1989, stay decision, discussed infra, which held in abeyance the OFA process, there was no need to act on this extension request. By letters received January 16, 1990, and January 29, 1990, Conrail supplied certain information requested by SEPTA. SEPTA has not responded.

<sup>2</sup>While this was termed a petition for reconsideration by the County's Solicitor, it acknowledged that the County took no position on the propriety of discontinuance of current rail service.

to reroute certain traffic essential to the national defense over other lines. On November 14, 1989, Lancaster also filed a petition to stay the exemption pending a complete environmental analysis pursuant to section 102 of the National Environmental Policy Act (NEPA). On November 20, 1989 Conrail filed a response to Lancaster's November 14th pleading.

In our decision served December 1, 1989, we found that the petition for reconsideration filed by DOD warranted a stay pending further review. We noted that, since a stay was being imposed, there was no need to consider Lancaster's stay request at that time. On December 4, 1989, DOD requested withdrawal of its petition for reconsideration. It has determined that an alternative line exists to reroute its traffic. In light of this, we lift the stay imposed in our earlier decision, and will now address the issues raised by Lancaster County in its stay request.

#### DISCUSSION AND CONCLUSIONS

Although Lancaster requests a stay, it fails to address the criteria necessary to justify that remedy. We must deny its request. We will, nonetheless, discuss the environmental issues it raises as grounds for a stay.<sup>3</sup>

Lancaster's pleading is, in effect, a petition for reconsideration of the Section of Energy and Environment's (SEE) November 1, 1989, Environmental Assessment (EA). In that document, SEE agreed with Conrail's conclusion, pursuant to 49 CFR 1105.7(c), that abandonment of this line will not significantly affect the quality of the human environment.

Lancaster principally argues two points: (1) that the EA did not address the possibility of retaining the line as an alternate route for future increases in the demand for rail service; and (2) that the alternate route currently used by Conrail (the Reading line) is not as efficient as the Enola line.

First, it is purely speculative to project what will happen in the future if the need for rail service in fact does increase, and if such increase will actually result in a lack of capacity on Conrail's Reading line. Lancaster has not provided us with any data regarding potential growth in this area, nor with any basis to expect substantial increases in rail service which might cause a capacity problem. Nor is SEE aware, through its contacts

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<sup>3</sup>The standards governing the disposition of a petition for stay are: (1) whether petitioners have a strong likelihood of prevailing on the merits of their appeal; (2) whether petitioners will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. See Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) (Holiday Tours).

Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989), states that protestants need not address the Holiday Tours criteria in seeking a stay on environmental grounds. However, that reference was in the context of stay requests made in those proceedings where an informed opinion on environmental issues cannot be made prior to the effective date of the notice of exemption. Here, the environmental assessment was completed on November 1, 1989, some 2 weeks before Lancaster's stay request and over 3 weeks prior to the effective date of the exemption. Thus, to justify a stay, Lancaster must satisfy the criteria of Holiday Tours.

with pertinent federal, state, and local officials, of any plans for economic development in this southeastern Pennsylvania region that might substantially increase the demand for rail service along Conrail's current route. We are required under the National Environmental Policy Act to evaluate only the reasonably foreseeable results of our actions. We conclude there is no reason to believe that future rail traffic will increase beyond Conrail's ability to handle such traffic after abandonment of the Enola Branch.

Second, we note that Conrail's decision to reroute its overhead traffic was a management decision subject to our review. Management is given considerable discretion in reaching these decisions since the efficiency or inefficiency of a railroad's rerouting decisions must necessarily take into account the carrier's operations over its entire system, and include economic as well as environmental considerations. Lancaster has offered no support for its contentions that routings over the subject line are more energy efficient, safer, and less noisy than any other routing. As Conrail notes, the efficiency of a line is determined by more than grade, curves, and highway crossings.<sup>4</sup> Traffic density is also a major component of a rail line's efficiency. The alternate Reading line, Conrail claims, is thus more efficient to use as a through route than the Enola line because, unlike that line, it generates local traffic.

Lancaster has also filed a statement of its willingness to assume financial responsibility for the right-of-way pursuant to 49 CFR 1152.29 and a request for a public use condition to enable it to negotiate with Conrail for use as a recreational trail of those portions of the line located in Lancaster County. Conrail has indicated its willingness to negotiate with the County for the potential sale of the right-of-way for public use purposes. We find that the provisions of 16 U.S.C. 1247(d) are applicable and that all of the criteria for imposing trail use/rail banking under 49 CFR 1152.29 have been met. Accordingly, we will revoke the notice of exemption to the extent necessary to implement trail use/rail banking, and will issue a Notice of Interim Trail Use (NITU) under 49 CFR 1152.29.

The parties may negotiate a trail use/rail banking agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, Conrail may fully abandon the line. See 49 CFR 1152.29(d)(1). At any time during the 180-day period, Conrail is free to notify the Commission that it is no longer willing to negotiate with Lancaster County, and the NITU will convert into a notice of abandonment. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As noted, SEPTA filed a notice of intent to file an OFA and has requested certain financial information from Conrail. Conrail states that it recently provided the requested information to SEPTA. It is not, however, clear from the record that Conrail has provided all the information required by section 1152.27(a). In light of this uncertainty, we will first direct SEPTA to notify Conrail and the Commission by February 27, 1990, whether they seek additional information under section 1157.27(a). If SEPTA seeks additional information, Conrail must notify it and the Commission by March 5, 1990, how long it needs to produce the information (up to a maximum of 60 days), which will then be the due date for the information. The offer will be due within 30 days after either: (a) SEPTA waives the information request; or (b) if SEPTA seeks additional information, the date

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<sup>4</sup> Conrail also observes that Lancaster does not question the fact that the line handles no local or overhead traffic.

Conrail produces that information.

We note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10905. See 49 CFR 1152.27(e)(2) and (f). If the line is to be sold under the financial assistance procedures, the petition for abandonment exemption would be dismissed and trail use would be precluded. Alternatively, if a sale under the financial assistance procedures does not occur, it will be possible to proceed under the trail use procedures.

Conrail previously filed an environmental report with its notice of exemption. As discussed earlier, SEE has examined Conrail's environmental report, verified the data it contains, and analyzed the probable effect of the proposed action on the quality of the human environment. SEE notes that the Pennsylvania Historical and Museum Commission has not yet completed its review of the 83 bridges located on the line that may be potentially eligible for inclusion in the National Register of Historic Places. Accordingly, we will impose a condition that Conrail retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

SEE has also concluded that the involved right-of-way may be suitable for alternative public use. In Rail Abandonments - Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986), we found that parties seeking trail use may invoke the public use provisions of section 10906 as an alternative. To justify imposition of a public use condition, a party must show: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for imposition of the time period. See 49 CFR 1152.28(a)(2). Lancaster County's request meets these requirements, and, thus, a public use condition will be imposed. We note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes including trail use.

As conditioned, this action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The stay imposed in our earlier decision in this proceeding is lifted.
2. The notice of exemption is revoked to the extent necessary to implement interim trail use/rail banking as set forth below.
3. This decision is subject to the following conditions:
  - (1) the requirement that Consolidated Rail Corporation (Conrail) must keep intact all the right-of-way underlying the track, including bridges and culverts, for a period of 180 days from the effective date of this decision to enable any State or local government agency to negotiate the acquisition of the right-of-way for public use; (2) the requirement that Conrail take no steps to alter the historic integrity of the bridges on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470; and (3) the requirement that Conrail comply with the terms and conditions for implementing interim trail use/rail banking set forth below. If an interim trail use/rail banking agreement is executed prior to

the 180-day period noted above, the public use condition will expire to the extent the trails use/rail banking agreement covers the line.

4. Subject to the conditions set forth above, Conrail may discontinue service, cancel tariffs for this line on not less than 10-days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking. Tariff cancellations must refer to this notice by date and docket number.

5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and the payment of any and all taxes that may be levied or assessed against the right-of-way.

6. Interim trail use/rail banking is subject to the future restoration of rail service and subject to the user continuing to meet the financial obligations for the right-of-way.

7. If the user intends to terminate trail use, it must send the Commission a copy of this notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reached by the 180th day, Conrail may fully abandon the line.

9. Southeastern Pennsylvania Transportation Authority and Conrail must comply with the procedural schedule set forth above for the submission of an offer of financial assistance. As noted above, the operation of the trail use procedures could be delayed or foreclosed by this financial assistance process pursuant to 49 U.S.C. 10905. See 49 CFR 1152.27(e)(2) and (f).

10. Offers of financial assistance and related correspondence to the Commission must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA."

11. This decision is effective on February 22, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

(SEAL)

Noreta R. McGee  
Secretary

28287  
EB

SERVICE DATE - OCTOBER 2, 1997

**SURFACE TRANSPORTATION BOARD<sup>1</sup>**

**DECISION**

Docket No. AB-167 (Sub-No. 1095X)

**CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--  
LANCASTER AND CHESTER COUNTIES, PA**

Decided: September 23, 1997

**BACKGROUND**

On October 3, 1989, Conrail filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 66.5 miles of track called the Enola Line in Lancaster and Chester Counties, PA. By decision served February 22, 1990, the ICC imposed a historic preservation condition that required Conrail to retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. The ICC also imposed public use and interim trail use conditions and permitted Conrail, subject to these conditions, to salvage track and material from the line. The decision provided that if no interim trail use agreement was reached, Conrail was authorized to fully abandon the line. The period for negotiating trail use was subsequently extended to April 15, 1993. By decision served April 19, 1993, the trail use condition was vacated, and Conrail was permitted to abandon the line. No reference was made, however, to the previously imposed historic preservation condition.

By petition filed April 15, 1996, a group called the Friends of the Atglen-Susquehanna Trail, Inc. (FAST), seeks to reopen the proceeding. Specifically, FAST requests that the historic preservation condition previously imposed be broadened from applying only to the bridges on the line to apply to the entire property as a linear resource. To justify reopening, FAST includes "new information" consisting of a letter from Brenda Barrett, Director of the Pennsylvania Historical and Museum Commission of the Bureau of Historic Preservation (SHPO), to Wendy Tippetts of an organization known as "TWO." In that letter, Ms. Barrett states that: "It is the opinion of the State Historic Preservation Office that the following properties are eligible for listing in the National Register of Historic Places: Low Grade Freight, Enola Branch, Atglen & Susquehanna Branch, A&S, Chester Cumberland, Lancaster, and York Counties. This early 20<sup>th</sup> century line meets National Register criteria A and C for the period 1903 to 1944." The letter is dated February 24, 1994, and the ICC was sent a copy. Conrail apparently was not notified of the letter at the time.

FAST also includes a letter, dated March 20, 1996, sent to it by Ms. Elaine Kaiser, Chief of the Board's Section of Environmental Analysis. Ms. Kaiser explains that historic preservation conditions the ICC (and now the Board) imposes do not normally expire or lapse due to the

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICC Termination Act or the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This decision relates to proceedings that were pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 13709-13711. Therefore, this decision applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

passage of time, and that post-imposition abandonment authorization does not implicitly vacate such a condition. Rather, it remains in effect until the Board issues a decision removing or modifying the condition.

Conrail and the Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission (PUC) replied to FAST's petition. PUC notes that, pursuant to the ICC's April 19, 1993 abandonment authorization, Conrail has removed the rails, ties, and other track materials from the right-of-way. PUC claims that this constitutes consummation of the abandonment and terminates the Board's jurisdiction in this matter.

Conrail explains the numerous actions it took to comply with the section 106 process, noting that the last action it took in this regard was the submission of various maps to the SHPO on January 30, 1990. The SHPO acknowledged receipt of the maps by letter to Conrail of March 5, 1990, and added it would "advise you shortly what additional archaeological survey would be required if the bridges were to be removed." Conrail states it has not received any further identification of archaeological sites. Conrail argues that, with termination of the negotiating period for trail use and its consummation of the abandonment, the only possible further action by the Board is completion of the section 106 process.<sup>2</sup> Conrail claims there is no basis for reassessment of the line's eligibility for inclusion in the National Register.

#### DISCUSSION AND CONCLUSIONS

FAST's petition will be denied. Neither FAST nor the SHPO has provided any justification for the SHPO's apparently<sup>3</sup> changed position with regard to eligibility of the entire line in the National Register. Indeed, the SHPO letter submitted by FAST does not even acknowledge that the SHPO had ever reached a previous determination on this matter. Although FAST maintains that it furnished additional information about the line to the SHPO, this information has not been supplied to Conrail or submitted for entry into the public record in this proceeding. It is clear that the SHPO was originally concerned only with the eligibility of certain bridges and archaeological sites for section 106 purposes. The fact that certain items were included in the SHPO's original opinion while others were excluded indicates that the SHPO did not originally consider the entire line eligible.

In addition to the lack of justification for broadening the exemption to encompass the entire line as a linear resource, the amount of time that has elapsed since imposition of the original condition--four years--dictates against its expansion. Conrail has had the opportunity to work on satisfying the originally imposed condition. To expand it at this time would only add further delay to the process. Although the Board retains jurisdiction over this matter until completion of the section 106 process, we will not broaden the previously imposed condition at this late date.

We note, however, that the original condition imposed by the ICC has never been modified to apply only to the bridges determined by the SHPO as eligible for listing in the National Register and to the potential archaeological sites near certain bridges. We will do so at this time.

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<sup>2</sup> Conrail expresses its belief that the section 106 process expired 330 days after its issuance and that the process has been completed; however, it is not arguing that position at this time.

<sup>3</sup> Although its caption lists the docket number in this proceeding, Ms. Barrett's February 24, 1994 letter to TWO refers to a project including additional lines and additional counties. It is unclear what this project entails.

As conditioned, this action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The historic preservation condition imposed in the decision served and published in the Federal Register on February 22, 1990, is modified to read as follows: Conrail shall retain its interest in and take no steps to alter the historic integrity of the 32 bridges eligible for the National Register and the potential archaeological sites near 36 of the bridges.
3. The request by FAST to expand this condition to include the entire line as a linear resource is denied.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION  
BUREAU FOR HISTORIC PRESERVATION  
BOX 1026  
HARRISBURG, PENNSYLVANIA 17108-1026

September 4, 1991

John P. Mikowychok  
Lancaster County  
Dept. of Parks and Recreation  
1050 Rockford Road  
Lancaster, PA 17602-4624

TO EXPEDITE REVIEW  
USE BHP REFERENCE NUMBER

Re: ER 89-1632-042-D  
Proposed Abandonment  
of Consolidated Rail  
Corporation, Docket  
No. AB-167 (Sub. No.  
1095X), Enola Line,  
Chester and Lancaster  
Counties

Dear Mr. Mikowychok:

The above named project has been reviewed by the Bureau for Historic Preservation (the State Historic Preservation Office) in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended in 1980, and the regulations (36 CFR Part 800) of the Advisory Council on Historic Preservation. These requirements include consideration of the project's potential effect upon both historic and archaeological resources.

Following the receipt of the additional information requested by the Bureau it was determined that forty-four bridges on the line did not appear to meet the National Register criteria, thirty-two bridges were eligible for the National Register and there are known or potential archaeological sites near thirty-six of the bridges. Enclosed is a copy of our letter with these findings.

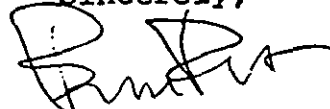
When this information was presented the Bureau had been informed that there may be local interest concerning the developemnt of a Rails-to-Trails facility. However, your letter to Senator Armstrong is the first official information concerning the project that we have received.

The Bureau for Historic Preservation supports the proposal that the Enola line be reused for trail purposes provided that all eligible bridges are retained and that no archaeological sites are destroyed.

Page 2  
J. Mikowychok  
Sept. 5, 1991

If you need further information in this matter please  
consult Susan M. Zacher at (717) 783-8946 or 783-8947.

Sincerely,



Brenda Barrett  
Director

cc: ✓ John J. Paylor, Conrail  
Interstate Commerce Commission  
Senator Gibson E. Armstrong  
BB/smz



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION  
BUREAU FOR HISTORIC PRESERVATION  
BOX 1026  
HARRISBURG, PENNSYLVANIA 17108-1026

December 12, 1989

John J. Paylor  
Senior General Attorney  
Conrail  
Six Penn Center Plaza  
Philadelphia, PA 19103-2959

RECEIVED  
HARRISBURG, PA  
DEC 15 1989

Re: ER 89-1632-042-B  
Proposed Abandonment by  
Consolidated Rail Corporation  
of a Portion of Its Enola  
Branch in Lancaster and  
Chester Counties, PA  
ICC No. AB 167 (Sub.-No.  
1095X)

Dear Mr. Paylor:

Based on the supplemental information recently submitted to the Bureau for Historic Preservation concerning the above referenced project, the Bureau has re-evaluated the effect of this activity on cultural resources. Your cooperation in dealing with this matter has been appreciated.

It is the opinion of the State Historic Preservation Officer that the following properties are not eligible for listing in the National Register of Historic Places. These bridges do not appear to meet the criteria for the National Register due to their age or lack of historical or engineering significance. Several, however, must be evaluated for the archaeological potential around the bridge (see list).

1. 0.15 Culvert Street, Parkesburg
2. 0.32 E. Bridge St., Parkesburg
3. 0.40 W. Bridge St., Parkesburg
4. 0.70 Amtrack RR, Parkesburg
5. 1.50 Lenover Rd., Lenover
6. 1.89 Stream, Lenover
7. 2.76 Octoraro Creek, Atglen
8. 2.84 Rt. 41, Atglen
9. 3.00 Main St., Atglen
10. 3.52 Stream, Atglen
11. 4.03 Octoraro Creek, Atglen
12. 5.03 Pawnals Rd., Atglen
13. 5.77 Brickmill Rd., Atglen
14. 6.35 White Oak Rd., Atglen
15. 7.20 Public Rd., Atglen
16. 7.52 Valley Run, Atglen
17. 8.22 Rte. 896, Bart
18. 8.44 Octoraro Creek, Bart

19. 8.78 Lamparter Rd., Bart
20. 9.15 Mt. Pleasant Creek, Bart
21. 9.76 Mt. Pleasant Road, Quarryville
22. 10.18 Hollow Rd., Quarryville
23. 10.68 Bushong Rd., Quarryville
24. 12.15 Hess Rd., Quarryville
25. 13.32 Rt. 344, Quarryville
26. 13.54 N. Lime St., Quarryville
27. 13.79 CR Quarryville, Quarryville
28. 15.00 Fairview Church Rd., Quarryville
29. 15.42 Stream, Quarryville
30. 15.91 Cinder Rd., Quarryville
31. 16.75 Rawlingsville Rd., Quarryville
32. 17.12 Sawmill Rd., Quarryville
33. 18.69 Sawmill Rd., Smithville
34. 20.51 Rawlingsville Rd., Smithville
35. 21.02 Sigmun Rd., Mrtcfrg.
36. 24.26 Colemansville Rd., Mrtcfrg.
37. 24.40 Stream, Safeharbor
38. 24.64 Conestoga River Rd.
39. 27.00 Stream, Safeharbor
40. 28.15 Silt Tunnel, Safeharbor
41. 30.15 Eshelmans Run, Safeharbor
42. 31.16 Manns Run, Port
43. 33.13 Port Road Branch, Crswll
44. 33.25 Stream, Crswll

It is the opinion of the State Historic Preservation Officer that the following properties are eligible for listing in the National Register of Historic Places under criteria A and C for their historic and engineering significance:

45. 2.89 Green St., Atglen
46. 3.81 LR 485, Atglen
47. 4.70 Octoraro Buck Rd., Atglen
48. 6.43 Stream, Atglen
49. 7.61 Vintage Rd., Bart
50. 10.90 Stream, Quarryville
51. 11.55 Stream, Quarryville
52. 11.68 LR 36086, Quarryville
53. 13.65 Stream, Quarryville
54. 13.83 Church St., Quarryville
55. 14.46 Oak Bottom Rd., Quarryville
56. 14.62 Rt. 222, Quarryville
57. 14.73 Stream, Quarryville
58. 16.32 Stream, Quarryville
59. 17.56 Stream, Quarryville
60. 18.08 Hollow Rd., Quarryville
61. 18.11 Stream, Quarryville

62. 18.50 Stream, Smithville
63. 19.03 Rd. & Stream, Smithville
64. 19.48 Rt. 272, Stream, Smithville
65. 19.61 LR 36025, Smithville
66. 20.15 Stream, Smithville
67. 21.54 Stream, Mrtcfrg
68. 23.04 Rt. 324, Mrtcfrg
69. 23.75 Pequea Creek, Mrtcfrg
70. 24.98 Stream, Safeharbor
71. 25.34 Stream, Safeharbor
72. 25.73 Shenks Rd., Safeharbor
73. 26.33 Boatman Run, Safeharbor
74. 26.52 Gardners Run, Safeharbor
75. 27.36 Conestoga Creek, Safeharbor
76. 29.58 Freys Run, Safeharbor
77. 33.05 Stream & Road, Port

In our opinion this project will have an effect on the above bridges which are eligible for the National Register of Historic Places. Furthermore, it is our opinion that this project will adversely effect the historic and architectural qualities that make the property eligible. To comply with the regulations of the Advisory Council on Historic Preservation, you must follow the procedures outlined in 36 CFR 800.5 (e), when the effect is adverse. You will need to notify the Advisory Council of the effect finding and continue to consult with the Bureau for Historic Preservation to seek ways to avoid or reduce the effects on historic properties.

Since the abandonment of this line may result in the demolition of bridges and disturbance of the surrounding land there may be archeological resources affected. There are known archaeological sites in the vicinities of many of these bridges. Because your request does not include sufficient information on the following bridges, we are unable to proceed with our review. Please submit map locations on U.S.G.S. 7.5 quadrangles of the following bridges.

78. 2.76 Octoraro Creek, Atglen
79. 3.52 Stream, Atglen
80. 4.70 Octoraro Buck Rd., Atglen
81. 6.43 Stream, Atglen
82. 7.52 Valley Run, Atglen
83. 8.44 Octoraro Creek, Bart
84. 9.15 Mt. Pleasant Creek, Bart
85. 10.90 Stream, Quarryville
86. 11.55 Stream, Quarryville
87. 13.65 Stream, Quarryville
88. 14.73 Stream, Quarryville
89. 15.42 Stream, Quarryville
90. 16.32 Stream, Quarryville
91. 17.56 Stream, Quarryville

Page 4  
J. J. Paylor  
Dec. 12, 1989

92. 18.11 Stream, Quarryville
93. 18.50 Stream, Smithville
94. 19.03 Road & Stream, Smithville
95. 19.48 Rt. 272, Stream, Smithville
96. 20.15 Stream, Smithville
97. 20.72 Stream, Mrtcfrg
98. 21.54 Stream, Mrtcfrg
99. 23.75 Pequea Creek, Mrtcfrg
100. 24.40 Stream, Safeharbor
101. 24.64 Conestoga River Road, Safeharbor
102. 24.98 Stream, Safeharbor
103. 25.34 Stream, Safeharbor
104. 25.73 Shenks Road, Safeharbor
105. 26.33 Boatman Run, Safeharbor
106. 26.52 Gardners Run, Safeharbor
107. 27.00 Stream, Safeharbor
108. 27.36 Conestoga Creek, Safeharbor
109. 28.15 Silt Tunnel, Safeharbor
110. 29.58 Freys Run, Safeharbor
111. 30.15 Eshelmans Run, Safeharbor
112. 31.16 Manns Run, Port
113. 33.05 Stream & Road, Port
114. 33.25 Stream, Crswll

If you need further information in this matter please consult  
Susan M. Zacher at (717) 783-8946 or 783-8947.

Sincerely,



Brenda Barrett  
Director

cc: Interstate Commerce Commission, Sec. of Energy & Environment  
BB/snz

AUG 17 1999

30264  
EB

SERVICE DATE - AUGUST 13, 1999

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION<sup>1</sup>—ABANDONMENT EXEMPTION—  
LANCASTER AND CHESTER COUNTIES, PA

Decided: August 6, 1999

This decision denies a petition for reconsideration of our decision served October 2, 1997, in this proceeding filed by a group called the Friends of the Atglen-Susquehanna Trail, Inc. (FAST). The decision also terminates the section 106 process of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA), removes a stay condition we previously imposed on Consolidated Rail Corporation (Conrail) with regard to certain designated historic resources, and imposes appropriate conditions to mitigate harm to those resources.

BACKGROUND

On October 3, 1989, Conrail filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 66.5 miles of track called the Enola line in Lancaster and Chester Counties, PA. By decision served February 22, 1990, our predecessor agency, the Interstate Commerce Commission (ICC), imposed a historic preservation condition that required Conrail to retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the section 106 process of NHPA.<sup>2</sup> The purpose of this “stand still” condition<sup>3</sup> was to

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<sup>1</sup> By decision served July 23, 1998, we approved, subject to certain conditions, the acquisition of control of Consolidated Rail Corporation (Conrail), and the division of Conrail's assets, by CSX Corporation and CSX Transportation, Inc. (jointly, CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (jointly, NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). CSX and NS effected control of Conrail on August 22, 1998, and they effected the division of Conrail's assets on June 1, 1999.

<sup>2</sup> The Section of Environmental Analysis (SEA) (then known as the Section of Energy and Environment) issued an Environmental Assessment (EA) on November 1, 1989. In the EA, SEA stated that “[t]he Pennsylvania Historical and Museum Commission has not yet completed its review of the 83 bridges found on the line that may be potentially eligible for inclusion in the National

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permit appropriate mitigation to be devised for these bridges. SEA then began negotiations with the Pennsylvania Bureau of Historic Preservation (SHPO) and Conrail, seeking to reach an agreement on mitigation measures.

More than 6 years after the notice of exemption was filed, on April 15, 1996, while these mitigation efforts were continuing, FAST filed a petition seeking to reopen the proceeding.<sup>4</sup> Specifically, FAST requested that we broaden the historic preservation condition previously imposed so that it would apply to the entire property as a linear resource, rather than applying only to the bridges on the line. To justify reopening, FAST included material it called new information, consisting of a letter<sup>5</sup> dated February 24, 1994, from the Director of the Pennsylvania Bureau of Historic Preservation, Brenda Barrett, to Wendy Tippetts of "TWO."<sup>6</sup> In that letter, Ms. Barrett

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<sup>2</sup>(...continued)

Register of Historic Places. This was based on a phone conversation of October 25, 1989 with the Pennsylvania State Historic Preservation Officer." As a result of this consultation, the review of potentially eligible historic sites focused solely on the bridges located on the Enola Branch. SEA then recommended imposition of a condition limited to preserving these bridges until appropriate mitigation could be determined, and that condition was imposed by the ICC in the decision served February 22, 1990.

This condition amounts to a temporary stay relating to certain bridges that provides time for the identification of historic properties and permits the evaluation of various mitigation alternatives. It is thus not a substantive condition and does not permit us to later convert the abandoned right-of-way into a trail against the railroad's wishes, which apparently has become the goal of FAST.

<sup>3</sup> The ICC also imposed public use and interim trail use conditions and permitted Conrail, subject to these conditions, to salvage track and material from the line. The decision provided that, if no interim trail use agreement was reached, Conrail was authorized to completely abandon the line. By decision served April 19, 1993, the trail use condition was vacated, and Conrail was permitted to abandon the line. That decision made no reference to the previously imposed historic preservation condition, which remained in effect.

<sup>4</sup> Conrail had by this time taken a number of steps to comply with the section 106 process, including submitting various maps to the SHPO on January 30, 1990. The SHPO acknowledged receipt of the maps by letter to Conrail on March 5, 1990, and added that it would "advise you shortly what additional archaeological survey would be required if the bridges were to be removed." The record does not indicate that the SHPO provided Conrail with any further identification of archaeological sites.

<sup>5</sup> Although the ICC was sent a copy of this letter in February 1994, Conrail apparently was not notified of it.

<sup>6</sup> This organization is not further identified. Ms. Barrett also sent a virtually identical letter  
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expressed a different position from the official position taken before the ICC in 1989, stating that the entire Enola Branch line was eligible for listing in the National Register of Historic Places. As noted above, the SHPO's original concern was limited to the bridges on the Enola Branch.

By decision served October 2, 1997, we denied FAST's petition, stating that we would not broaden the previously imposed condition at that late date. We noted (slip op. at 2) that "[n]either FAST nor the SHPO has provided any justification for the SHPO's apparently changed position with regard to eligibility of the entire line in the National Register."

We determined that expanding the historic preservation condition was unjustified and would only add further delay to the process. The Board, however, modified the original condition imposed by the ICC so that it would apply only to those bridges that had been determined by the SHPO as eligible for listing in the National Register and to potential archaeological sites near certain bridges, as noted in the SHPO's September 4, 1991 letter to J. Mikowychok of the Lancaster County Department of Parks and Recreation.<sup>7</sup>

On October 24, 1997, FAST filed a petition for reconsideration of the Board's decision not to reopen the proceeding to expand the historic preservation condition so as to preserve the entire line. FAST argues that "the subject rail line is a resource of national significance which is in imminent danger of being lost unless the Board takes action." FAST maintains that, at the time the SHPO made its initial determination concerning the eligibility of certain bridges, it did not have before it the information necessary to make an eligibility determination as to the entire line. Conrail replied, claiming that FAST has submitted no new evidence justifying reconsideration.

Early in 1998, SEA, after extensive negotiations and consultations with Conrail and the SHPO, developed a proposed Memorandum of Agreement (MOA) concerning mitigation for certain bridges. Under the terms of the proposed MOA, Conrail would be required to document (to state standards) certain bridges, which would then be removed pursuant to an order of the Pennsylvania Public Utility Commission (PUC).<sup>8</sup> In addition, Conrail would fund and furnish

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<sup>6</sup>(...continued)

on April 19, 1994, to a Mr. Mike Keiser of the Pennsylvania Department of Transportation.

<sup>7</sup> The historic preservation condition now states: "Conrail shall retain its interest in and take no steps to alter the historic integrity of the thirty-two bridges eligible for the National Register and the potential archaeological sites near thirty-six of the bridges."

<sup>8</sup> On September 24, 1993, Conrail filed an application with the PUC to abolish the rail-highway crossings on the line. The PUC held a number of hearings, and eventually ordered that Conrail attempt to mediate with members of the public and FAST concerning efforts to preserve historic bridges on the line. The mediation resulted in settlement agreements between Conrail and a number of townships. Conrail was to convey segments of the line to the townships through which

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materials for a display relating to the Enola Branch line in a transportation museum administered by the SHPO.<sup>9</sup>

By letters dated December 14, 1998, SEA submitted the proposed MOA, together with supporting data required by 36 CFR 800.8, to the Advisory Council on Historic Preservation (ACHP or Council) and to the SHPO in order to obtain their comments and continue consultations on avoiding or reducing effects on historic properties. In addition, SEA circulated the draft MOA to FAST and the Historic Preservation Trust of Lancaster County (the MOA was also made available by SEA to any other group that may have had an interest in evaluating the provisions of the agreement) for their review and comment pursuant to 36 CFR 800.5(e)(1). SEA expressed its intention to incorporate timely comments from ACHP, the SHPO, and any interested party, as appropriate. SEA also advised that further consultation could be terminated if it appeared that consultation would be unproductive.

By letter dated January 13, 1999, ACHP acknowledged receipt of SEA's December 14, 1998 letter appending the proposed MOA, but claimed that issues concerning identification of historical properties remained outstanding. ACHP—citing 36 CFR 800.4(c)(1) of its regulations, which provides that “the passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible”—maintained that we are required to open the case to identify additional properties as historic, including a determination on the historical significance on the entire Enola Branch line. Moreover, ACHP contended that “serious shortcomings” existed in our section 106 process, especially with regard to the public's involvement with the process, and that more information, as well as a meeting to be scheduled by the Board with the SHPO, Conrail, and ACHP participating, was needed before the Council could engage in a meaningful review of the undertaking.

On February 1, 1999, SEA responded to ACHP's January 13, 1999 letter, stating that SEA had already undertaken and completed an extensive process, including ample public notice and

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<sup>8</sup>(...continued)

the segment passed. The townships were to assume future ownership and maintenance responsibility for the line and bridges and Conrail was to contribute money for maintenance of bridges that were to remain in place. Some bridges, deemed to present highway safety hazards, were to be removed. On October 9, 1997, the PUC ordered that the rail-highway crossings on the line be closed and that bridges determined to present serious safety hazards, including five identified as historic, be removed. We understand that the PUC decision has been appealed. Conrail has yet to remove the bridges while the historic preservation condition remains outstanding.

<sup>9</sup> Conrail, in a letter dated August 4, 1998, to the SHPO, enclosed a copy of the MOA, which had been signed by the Chief of SEA, and stated in the letter that the MOA was acceptable to Conrail. Conrail also indicated it would sign the MOA as soon as it received a signed copy thereof from the SHPO.

opportunities for public participation, to identify historic resources involved in the proposed abandonment. SEA noted that the identification phase of the section 106 process had been completed and that the Board was now properly engaged in the mitigation phase of the process. SEA also noted that ACHP's own regulations regarding re-evaluation of properties after the passage of time, quoted above, are permissive, not mandatory, as are the Board's regulations on reconsideration. SEA concluded by stating that comments from ACHP regarding mitigation would be welcomed and thoroughly considered.

By letter dated February 26, 1999, ACHP responded that SEA had "failed to clarify why the properties within the area of potential effect should be viewed as discrete historic properties rather than as a rail line with contributing elements." ACHP also stated that it had referred the matter to the Keeper of the National Register of Historic Places for a determination on whether the properties at issue are eligible for listing in the National Register.<sup>10</sup> In addition, ACHP renewed its request for more background information and argued that "any further efforts on the part of the [Board] to finalize the current draft Memorandum of Agreement will be in violation of the statutory and regulatory requirements of Section 106."

#### DISCUSSION AND CONCLUSIONS

We will deny FAST's petition for reconsideration. A petition for reconsideration must be supported by a showing of material error or that the prior action will be materially affected because of new evidence or changed circumstances. 49 CFR 1115.3(b). Petitioner has not made the required showing here.

FAST's attempts to explain the SHPO's apparent change of position on the eligibility of the entire line in the National Register and its submission of one new exhibit—a letter from the Curator of Transportation of the National Museum of American History to Randolph Harris of the Historic Preservation Trust of Lancaster County, PA—do not amount to changed circumstances or new evidence sufficient to warrant our reconsideration of this matter. The additional testimonial about how this right-of-way could be used for trail purposes is clearly not a changed circumstance or new evidence: that material could have been presented earlier. In any event, the Curator carefully states that he takes "... no formal position ..." here. Thus, we cannot give substantial weight to this statement.

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<sup>10</sup> On April 16, 1999, the Keeper of the National Register issued a one page form entitled, "Determination of Eligibility Notification." The form set forth in one paragraph the Keeper's conclusion, based on the request of ACHP, that:

the entire Enola Branch Line is eligible for the National Register of Historic Places for its historic and engineering significance. . . . The Enola Branch Line differed from other railroads of the period in that it was designed to have no contact with other vehicular routes, and it was to run almost completely level and in a straight line.

FAST has re-submitted the February 24, 1994 letter from the SHPO to Ms. Tippetts. That letter was already disposed of in our October 2 decision. FAST has not explained the apparent discrepancy between that letter and the SHPO's official position before the ICC on this matter. The SHPO never modified that position—that its concern was limited to bridges—by filing a petition with us asking for the entire line to be identified as historic. Indeed, a letter sent to Conrail as late as January 27, 1998, confirms that the SHPO's concerns were still limited to bridges and that the SHPO would not broaden its original position.<sup>11</sup>

Similarly, the Keeper's recently submitted pro forma statement that the entire line is historic does not justify reopening of the ICC's 1990 administratively final decision completing the identification phase. The ICC's decision was based on an agreement between the SHPO and SEA about the properties that should be protected, i.e., certain bridges. Under these circumstances, to restart the process now to address mitigation for the entire line would add inexcusable delay to a process that has already taken much too long.

FAST has not shown material error in our October 2, 1998 decision. Although FAST refers to various provisions of the Code of Federal Regulations, FAST does not indicate that any of these provisions have been violated here. In fact, as discussed below, all applicable laws and regulations have been satisfied. Accordingly, we have no grounds for modifying our previous decision denying FAST's petition, and we will not do so.

We will also terminate the section 106 process and remove the historic preservation condition. Section 106 requires the agency to "take into account" the effect of its licensing decisions on properties included in or eligible for inclusion in the National Register of Historic Places and to afford ACHP a reasonable opportunity to comment.<sup>12</sup>

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<sup>11</sup> The SHPO also acknowledged in this letter, which the SHPO copied to both ACHP and FAST, that "... the next step in the Section 106 process is the preparation of a Memorandum of Agreement ...."

<sup>12</sup> Regulations implementing section 106 at 36 CFR part 800 involve a number of steps. First, the agency responsible for the licensing decision must identify historic properties that may be affected by an undertaking. The agency bases this determination on background information, which could include surveys or field studies, and consultation with the appropriate SHPO. Second, if the agency identifies historic properties, it must assess what effect its licensing decision will have on the properties — no effect, no adverse effect, or an adverse effect. Third, if the effect is adverse, the agency must attempt to find ways to mitigate the harm to historic properties. This involves consulting with the SHPO and others in an effort to develop an MOA that outlines mitigation measures that the agency will take to minimize or avoid harm to the properties.

If an MOA is executed—that is, agreed upon and signed by the agency, SHPO, and ACHP—the agency may then issue its license in compliance with the terms of the MOA. If, on the  
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Our regulations<sup>13</sup> are designed to strike a balance between the section 106 process and our own regulatory programs. In revising the environmental rules in 1991, the ICC noted that the historic consultation process had become "unduly burdensome and not particularly efficacious in ICC proceedings . . ." Implementation of Environmental Laws, 7 I.C.C.2d 807, 826 (1991) (Implementation). The ICC also observed that:

Where historic property is involved, our ability to protect it is very limited. . . . We do not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the deed, as a condition to obtaining abandonment . . . authority. Nor can we deny . . . approval of a transaction solely on the ground that it would adversely affect historic resources. Thus, as a practical matter, documentation of the historic resources involved in the proposal under review . . . is the only form of nonconsensual mitigation available to us. . . . Any attempt to either preclude or force a railroad to sell (or donate) its property for a non-rail purpose, as a condition to obtaining abandonment . . . authority, would plainly constitute an unauthorized taking under the Fifth Amendment."

Id. at 828-29.

We have met our section 106 obligations within the limits of our conditioning authority here. The ICC, in consultation with the SHPO, first identified historic properties on the Enola Branch line. After completion of this identification step, and again in consultation with the SHPO, the ICC determined that abandonment would result in an adverse effect on the historic properties.<sup>14</sup> SEA then consulted extensively with the SHPO and Conrail, in accordance with 36 CFR

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<sup>12</sup>(...continued)

other hand, there is no MOA, and consultation has become unproductive, the agency, SHPO, or ACHP may terminate the consultation process. The agency must then submit documentation to ACHP, request its written comments, and then take these written comments into account in deciding if and how to proceed.

<sup>13</sup> See 49 CFR 1105.8.

<sup>14</sup> We note that the SHPO has acknowledged that the first two steps of the process were completed in 1994. In two separate letters dated April 10, 1996, and April 12, 1996, attached, respectively, as Exhibits T and U to FAST's petition for reconsideration, the SHPO wrote:

Section 106 review is a three-step process involving identification, determination of effect and mitigation. The first two steps were completed with the [Pennsylvania Bureau of Historic Preservation] decisions on December 12, 1989 and October 17, 1994 which stated that there would be an adverse effect if bridges were altered or destroyed. The final section of the 106 review process, mitigation, has not been completed.

800.5(e)(4), to seek ways to avoid or reduce these adverse effects. Although these mitigation efforts did not result in the formal MOA which it sought,<sup>15</sup> SEA was able to fashion an arrangement with Conrail whereby appropriate historical preservation mitigation measures for the bridges will be achieved. These measures, set forth in the appendix to this decision and which we will impose as conditions,<sup>16</sup> provide, among other things, that Conrail will perform recordation of five bridges to State Level Recordation Standards and also provide funding for the development of an interpretive display outlining the history of the Enola Branch.

In addition, SEA submitted the proposed MOA to the Council, and requested its comments, pursuant to ACHP regulations at 36 CFR 800.5(e)(6).<sup>17</sup> Rather than provide input relevant to this stage of the section 106 process, however, ACHP responded by submitting letters raising questions concerning the "identification phase" of the section 106 process, even though that phase was completed years ago and reopening of that process has not been justified here. The Council has been provided with ample opportunities to submit comments relevant to the sole remaining environmental issue—appropriate mitigation of the previously identified adverse effects of the abandonment. But ACHP has declined to submit substantive comments at this time because it questions the conclusions reached many years ago during the identification phase.

It is evident that consultation with ACHP has reached an impasse, and that it would be fruitless to pursue this matter further with it. The "stand still" historic preservation condition that the ICC originally imposed in this case has been in place for over 10 years. Despite a great deal of work to resolve differences among concerned parties, these differences have not been resolved. In spite of our efforts to involve ACHP in the current phase of the section 106 process—the mitigation of adverse effects on previously identified historical properties—ACHP will not respond on this topic and instead continues to seek to dictate the Board's procedures and compel us to reopen this

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<sup>15</sup> A formal MOA was not entered into because the SHPO, in spite of extensive discussions and apparent general agreement with its provisions, did not sign the draft MOA. As noted, various correspondence between the parties indicates that Conrail had agreed to comply with all of the provisions requested by the SHPO, and those provisions are incorporated into the conditions we are imposing here.

<sup>16</sup> Although the Board's conditioning powers are generally limited to requiring appropriate documentation of historic rail property (see Implementation, at 830), we may impose this condition here because Conrail has voluntarily agreed to it.

<sup>17</sup> By submitting the proposed MOA to ACHP, together with the supporting documentation, SEA provided the Council with all information concerning the undertaking specified in ACHP's regulations for terminating consultation, thus permitting the section 106 process to move forward without additional delay. This was appropriate in light of the fact that this proceeding is over 10 years old and that SEA had already undertaken and completed an extensive environmental process, including ample public notice and opportunities for public participation.

case and declare this entire rail line historic.<sup>18</sup> Rather, having determined that further consultation would be fruitless in this matter, we will terminate the section 106 consultation process. We will treat the Council's letters of January 13, 1999, and February 26, 1999, as its comments and recommendations on the undertaking. We have taken these comments into account, and the section 106 process is now complete.

We have fully complied with NHPA, including extensive consultations with the appropriate parties to ensure that all effects from the proposed abandonment on historic resources have been taken into account. We have examined the proposed MOA and believe it constitutes appropriate historic mitigation for the bridges at issue, and we will impose that proposed MOA as a condition in this decision.

We have furnished both FAST and Lancaster County with copies of the draft MOA. Although they have declined to comment, it is clear that we have provided ample opportunity for interested parties to participate. These entities, which are on our service list, will receive copies of this decision.

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

It is ordered:

1. The petition for reconsideration filed by FAST is denied.
2. The section 106 process is terminated and the previously imposed historic preservation condition, as modified, is removed.

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<sup>18</sup> Even if we were to identify the line as historic at this late date, we would not and could not impose the relief FAST seeks, which is permanent preservation of the line as a historic trail. The section 106 process only involves the identification and preservation of records of the right-of-way here. It does not provide for the preservation of the right-of-way itself. The "stand still" historic preservation condition that the ICC originally imposed in this case is not a substantive condition—it is merely a temporary arrangement (albeit one which has been in place for over 10 years) to maintain the status quo while the section 106 process is completed. FAST wants to use this process to convert a temporary stay into a permanent one with the hope of turning the line into a trail. This is clearly more than merely expanding the original condition that related to certain bridges.

We note that unsuccessful negotiations to convert the rail right-of-way to a trail occurred over a period of 2 years between Conrail and Lancaster County. After these negotiations ended, FAST approached Conrail about acquiring the line for a trail. Conrail states that it was willing to convey the property to FAST, but FAST was unable to acquire certain guarantee agreements in order to satisfy PUC requirements.

Docket No. AB-167 (Sub-No. 1095X)

3. Conrail shall comply with the terms of the proposed MOA, attached as the appendix to this decision.

4. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

APPENDIX

MEMORANDUM OF AGREEMENT

BETWEEN  
THE SURFACE TRANSPORTATION BOARD  
AND  
THE PENNSYLVANIA STATE HISTORIC  
PRESERVATION OFFICE

SUBMITTED TO  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
PURSUANT TO 36 CFR 800.5(e)(4)

REGARDING  
ABANDONMENT OF CONRAIL ENOLA LINE  
LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA

WHEREAS, on October 3, 1989, Consolidated Rail Corporation (Conrail) filed a Notice of Exemption, designated Docket No. AB-167 (Sub-No. 1095X), with the Interstate Commerce Commission (ICC) pursuant to 49 CFR 1152.50, to abandon a line of railroad in Lancaster and Chester Counties, Pennsylvania;

WHEREAS, on November 1, 1989, the ICC served its Environmental Assessment, which noted that the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470, had not been completed because the Pennsylvania Historical and Museum Commission (the designated State Historic Preservation Officer for the Commonwealth of Pennsylvania) (SHPO) had not completed its review of the bridges on the line;

WHEREAS, by letter dated December 12, 1989, SHPO identified 33 bridges on the line as eligible for listing in the National Register;

WHEREAS, by decision served February 22, 1990, the ICC imposed a condition on the abandonment prohibiting Conrail from taking steps to alter the historic integrity of the bridges on the line pending completion of the Section 106 process;

WHEREAS, on September 24, 1993, Conrail filed with the Pennsylvania Public Utility Commission (PUC) an application to abolish the various rail-highway crossings on the abandoned line;

WHEREAS, the PUC held various hearings and conferences and authorized mediation with Conrail and representatives of the public, including Friends of the Atglen-Susquehanna Trail (FAST), concerning efforts to preserve the historic bridges on the abandoned line;

WHEREAS, within the context of the PUC proceeding and as a result of mediation, settlement agreements were reached between Conrail and the Pennsylvania Department of Transportation (PennDOT) and between Conrail and the Townships of West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic and Conestoga;

WHEREAS, pursuant to the settlement agreements with the Townships and PennDOT which were approved and adopted by the PUC, Conrail will convey segments of the abandoned rail line to the Townships through which each segment passes, the Townships will assume future ownership and maintenance responsibility for the line and the crossing structures, Conrail will contribute an agreed sum of money to the Townships for future maintenance of the crossing structures which are to remain in place, and certain other crossing structures, deemed to constitute serious highway safety hazards, will be removed;

WHEREAS, on October 9, 1997, the PUC ordered that the various rail-highway crossings on the abandoned line be closed and that a number of bridges deemed to constitute serious safety hazards be removed, including five bridges previously identified by the SHPO as eligible for inclusion in the Federal Register;

WHEREAS, the PUC ordered that an additional eligible bridge should be removed only if Penn DOT does not within 2 years let a contract to realign Marticville Road (SR 324), which passes beneath the bridge, and PennDOT has agreed to provide for realignment of that road to bypass the bridge;

WHEREAS, the five eligible bridges to be removed were identified by the PUC as Bridge Numbers 2 (Orchard Buck Road, at railroad milepost 4.70), 10 (Pumping Station Road, at railroad milepost 11.68), 15 (Oak Bottom Road, at railroad milepost 14.46), 16 (U.S. Route 222, at railroad milepost 14.62), and 21 (Hollow Road at railroad milepost 18.08);

WHEREAS, the Surface Transportation Board (STB), successor to the ICC, has determined, in consultation with SHPO, that closing the rail-highway crossings as ordered by the PUC will have an adverse effect on the five eligible bridges to be removed, and removal of the bridges will result in loss of the Enola Line (also sometimes called the Low Grade Line) right-of-way as a linear resource;

WHEREAS, opportunities to comment have been afforded to the public and to interested parties, and include opportunities afforded in connection with the development

of the ICC's Environmental Assessment served on November 1, 1989; the various hearings, conferences and mediation sessions held or sponsored by the PUC; a public meeting held in Providence Township on December 29, 1997, pursuant to newspaper advertisement and mail notice to known interested parties; and a meeting held at the offices of the SHPO on January 13, 1998, at the request of the Historic Preservation Trust of Lancaster County (HPT) which invited the following parties to participate in the meeting: Lancaster County Planning Commission, FAST, Lancaster County Conservancy, Preservation Pennsylvania, Pennsylvania Historical and Museum Commission, National Trust for Historic Preservation, Advisory Council on Historic Preservation, Lancaster Chapter of Sierra Club, Lancaster Greens, Chesapeake Bay Foundation, Citizens for Responsible Growth, U. S. Army Corp of Engineers, and Conrail;

WHEREAS, interested parties commenting on the proposal at these meetings included HPT, Preservation Pennsylvania, FAST, PennDOT, a supervisor of Martic Township, representatives of Providence and Conestoga Townships, and a resident of West Salisbury Township;

WHEREAS, by letter dated January 27, 1998, SHPO recommended that appropriate mitigation for the adverse effects would be recordation of the five bridges to be removed to State Level Recordation Standards and development of an interpretative display outlining the history of the line for placement in the Pennsylvania Railroad Museum;

WHEREAS, the Pennsylvania Railroad Museum has recommended that an appropriate display would be a 6 - to - 8 minute video, which could be produced at a cost of \$15,437.00;

WHEREAS, the STB only has power to require documentation as mitigation (Implementation of Environmental Laws, 7 I.C.C. 2d 807, 829 (1991)), but a railroad applicant may consent to provide additional mitigation;

WHEREAS, STB and SHPO have invited Conrail to become a consulting party pursuant to 36 C.F.R. 800.1(c)(2)(ii), in order to advance the objectives of Section 106, and to concur in this MOA;

WHEREAS, notwithstanding the provisions of 49 CFR 1105.8(f) that a historic condition in an abandonment case normally will not extend beyond the 330-day statutory time period for abandonment proceedings, Conrail is willing to become a consulting party, to concur in this MOA, to provide recordation of the five bridges to State Level Recordation Standards, and to provide funding of \$15,437.00 for the proposed display to be developed for placement in the Pennsylvania Railroad Museum.

Docket No. AB-167 (Sub-No. 1095X)

NOW, THEREFORE, STB and SHPO agree that the following stipulations shall be implemented in order to take into account the effects of the rail line abandonment on historic properties.

STIPULATIONS

A. The STB shall insure that Conrail will perform recordation of the five bridges identified as bridge numbers 2, 10, 15, 16 and 21 to State Level Recordation Standards prior to demolition of the bridges.

B. The STB shall insure that Conrail will comply with the terms of its agreement to provide funding in the amount of \$15,437.00 to the Railroad Museum of Pennsylvania for development of a public, interpretative display outlining the history of the Enola Line.

C. Administrative Conditions:

1. Any party to this MOA may propose to the STB that it be amended, whereupon the STB will consult with the other parties in accordance with 36 CFR 800.5(e)(5).

2. Should the STB determine that it cannot implement the terms of this MOA or should the SHPO determine that this MOA is not being properly implemented, the STB or the SHPO may propose that this MOA be terminated, explaining the reasons for termination, and suggesting consultation. If after 30 days no agreement is reached, the STB may terminate this MOA by notifying all parties, and shall consult in accordance with 36 CFR 800.5(e)(4) or request comments of the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.6(b).

3. This MOA shall remain in effect until completion of recordation of the five bridges as provided in Stipulation A and the provisions of funding by Conrail for development of a public display as provided in Stipulation B, or until 330 days from the date of execution hereof, whichever shall first occur.

D. Completion of Process

1. Execution of this MOA by the STB and the SHPO, its acceptance by the Council pursuant to 36 CFR 800.6(a)(1),(i) or (ii) or further comments by the Council pursuant to 36 CFR 800.6(a)(1)(iii), and implementation of its terms, shall determine that the STB has afforded the Council an opportunity to comment on the abandonment of the Enola Line and its effects on historic properties, and that the STB has taken into account the effects of the line abandonment on historic properties.

2. Upon acceptance of this MOA by the Council, the furnishing of comments by the Council pursuant to 36 CFR 800.6(a)(2) and consideration of those comments pursuant to 36 CFR 800.6(c)(2), the furnishing of Council views pursuant to

Docket No. AB-167 (Sub-No. 1095X)

36 CFR 800.6(e)(1), or termination of this MOA, the Section 106 process as it pertains to abandonment of the Enola Line shall be completed.

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, D.C. 20423-0001

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**OFFICIAL BUSINESS**  
**PENALTY FOR PRIVATE USE \$300**  
**RETURN AFTER FIVE DAYS**

SERVICE DATE - OCTOBER 18, 1999

30571  
SEC

SURFACE TRANSPORTATION BOARD  
Washington, D.C. 20423

DOCUMENT  
FOLDER

October 13, 1999

Docket No. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION-ABANDONMENT  
EXEMPTION-LANCASTER AND CHESTER COUNTIES, PA

**NOTICE**

A court action, entitled as shown below,  
was instituted on or about October 7, 1999,  
involving the above-entitled proceeding:

No. 99-5837

Friends Of The Atglen-Susquehanna Trail, Inc.

v.

Surface Transportation Board  
and  
United States of America

before the

United States Court of Appeals for the Third Circuit

VERNON A. WILLIAMS  
Secretary

08  
19953

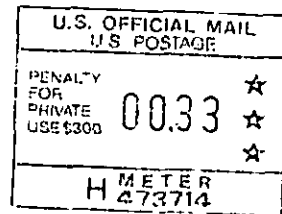
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DATE: October 19, 1999

SUBJECT: A-00111016; C-00913256

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

**DOCKETED**  
OCT 20 1999

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DOCUMENT  
FOLDER

A-00111016. Application of Consolidated Rail Corporation for the abolition of 31 crossings of the Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County, Pennsylvania.

C-00913256 Board of Supervisors of Bart Township v. Consolidated Rail Corporation et al

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Attached is a copy of a Motion to Request Extensions of Time, filed by Consolidated Rail Corporation in connection with the above docketed proceedings.

This matter is assigned to your Office for appropriate action.

Attachment

cc: TSR  
TSL

EEF

laf