

SERVICE DATE – JULY 21, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36387

OHIO RAIL DEVELOPMENT COMMISSION—PETITION FOR DECLARATORY ORDER

Digest:¹ Before deciding the merits of a petition for declaratory order filed by the Ohio Rail Development Commission concerning whether it can pursue interim trail use/rail banking under the National Trails System Act for a rail line in Ohio, the Board requests that Consolidated Rail Corporation, a previous owner of the Line, comment on certain issues.

Decided: July 20, 2020

By petition filed February 18, 2020, the Ohio Rail Development Commission (ORDC) requests that the Board issue a declaratory order finding that, upon the existing operator's receiving discontinuance authority, ORDC may rail bank a 14.8-mile rail line it owns in Perry and Muskingum Counties, Ohio (the Line) pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and the Board's interim trail use/rail banking regulations. No replies were filed in response to ORDC's petition. For the reasons discussed below, before deciding the merits of the petition, the Board will invite Consolidated Rail Corporation (Conrail), a previous owner of the Line, to address whether it abandoned the Line before selling the right-of-way to ORDC's predecessor.

BACKGROUND

ORDC states that the Line, formerly known as the Glass Rock Branch, includes the Fultonham Running Track from milepost 0.0 to milepost 3.1 (Glass Rock-East) and Z&W Industrial Track from milepost 45.8 to milepost 57.5 (Glass Rock-West). (Pet. 2, 4.) ORDC explains that the Line was originally part of the Conrail system and was part of a larger line that was the subject of an earlier Conrail abandonment application. (*Id.* at 2, 4.) On November 30, 1981, in Conrail Abandonment of Lines in Zanesville, Ohio (Conrail Abandonment), Docket No. AB 167 (Sub-No. 445N), Conrail filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973 (3R Act), as amended by the Northeast Rail Service

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

Act of 1981 (NERSA), 45 U.S.C. § 748,² to abandon 40.8 miles of rail line in Zanesville, Ohio. In a decision served March 12, 1982, Conrail was authorized to abandon segments totaling approximately 38.2 miles of the 40.8 miles of rail line,³ (including all of the Line), and on July 13, 1982, the Interstate Commerce Commission (ICC) published an appraisal of the net liquidation value of 31.3 miles of the rail line in the Federal Register (47 Fed. Reg. 30,308).⁴

According to ORDC, the Ohio Rail Transportation Authority (ORTA)⁵ purchased the Line, “which was authorized for abandonment but not fully abandoned,” from Conrail in 1982. (Pet. 2, 5.) ORDC asserts that, because the Conrail Abandonment proceeding was undertaken pursuant to NERSA, statutory restrictions were placed on Conrail’s liquidation of the Line and consummation of its abandonment authority.⁶ (Pet. 4.) ORDC states that, via a quitclaim deed dated July 30, 1982, ORTA purchased approximately 31.4 miles of the line authorized for abandonment in Conrail Abandonment, which included the Line. (*Id.* at 5.)

ORDC represents that, after ORTA purchased the Line, two rail carriers were authorized to operate on it. (Pet. 2, 6-8.) First, on March 23, 1983, Moxahala Valley Railway Company (MOXV) obtained a modified certificate of public convenience and necessity “to provide service over a portion of the lines abandoned by ConRail [sic]” in Conrail Abandonment. See Moxahala Valley Ry.—Operation—in Zanesville, Ohio, FD 30141, slip op. at 1 (ICC served March 23, 1983). According to ORDC, in the fall of 1986, ODOT, as the successor to ORTA, provided formal notice to terminate and vacate MOXV’s operations for default after a 60-day transition period. (Pet. 7.) Second, on February 27, 1987, Ohi-Rail Corporation (Ohi-Rail) was authorized to lease and operate the Line. See Ohi-Rail Corp.—Lease & Operation Exemption—Ohio Dep’t of Transp., FD 30986 (ICC served Feb. 27, 1987). ORDC states that Ohi-Rail continues to have authority to operate the Line, although no freight rail service has occurred over the Line in several decades. (Pet. 8.)

² NERSA established separate procedures for abandonments filed by Conrail. See Conrail Abans. Under NERSA, 365 I.C.C. 472, 472 (1981).

³ The remaining 2.6 miles of the line were subject to an offer of financial assistance pursuant to 45 U.S.C. § 748(d) and were not included in the abandonment authorization.

⁴ Under section 308(e) of NERSA, for any abandonment application granted under section 308(b), the ICC was required to “appraise the net liquidation value of the line to be abandoned” and “publish notice of such appraisal in the Federal Register.” 45 U.S.C. § 748(e)(1). For reasons that are not apparent from the record, the ICC’s appraisal did not include certain segments of the rail line authorized for abandonment in the March 12, 1982 decision.

⁵ ORDC states that it is the successor to ORTA and the Ohio Department of Transportation (ODOT). (Pet. 2.)

⁶ Specifically, ORDC cites to portions of section 308(e) of NERSA, which required Conrail to sell a line authorized for abandonment “[i]f, within 120 days after the date on which an appraisal is published in the Federal Register . . . , [Conrail] receives a bona fide offer for the sale, for 75 percent of the amount at which the net liquidation value of such line was appraised by the [ICC].” (Pet. 4 n.3 (citing 45 U.S.C. § 748(e)(3)(A)).)

ORDC wishes to pursue interim trail use/rail banking of the Line under the Trails Act, once Ohi-Rail receives authority to discontinue service.⁷ ORDC states that while neither it nor either of its predecessors has been subject to the Board's jurisdiction,⁸ the Line itself has at all times remained subject to the agency's jurisdiction. (Pet. 2, 10-11.) ORDC contends that Conrail was statutorily barred from exercising its abandonment authority granted in Conrail Abandonment, (Pet. 12 (citing 45 U.S.C. § 748)), and notes that two operators sought and received operating authority for the Line, (Pet. 2, 10). Therefore, ORDC argues that the Board should permit ORDC to directly invoke the Trails Act, citing various agency precedent. (*Id.* at 10-12, 14-15.)

In the alternative, ORDC states that, if the Board decides that ORDC cannot directly invoke the Trails Act, ORDC is prepared to seek partial revocation of its exemption from Board regulation and avail itself of the Board's abandonment procedures under 49 U.S.C. § 10903. (Pet. 15-16.)

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. *See Bos. & Me. Corp. v. Town of Ayer*, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Order Proc., 5 I.C.C.2d 675, 675 (1989). For the reasons discussed below, before deciding the merits of the petition, the Board will request a response from Conrail providing any information it may have as to whether the Line was abandoned prior to the 1982 sale to ORTA, and, if it was not abandoned, whether the sale to ORTA was executed pursuant to section 308(e)(3)(A) of NERSA.

When a rail carrier that has received authority to abandon a rail line exercises, or “consummates,” that authority, the line is removed from the interstate rail network, and the Board's jurisdiction over the line terminates. *See Hayfield N. R.R. v. Chi. & N.W. Transp. Co.*, 467 U.S. 622, 633-34 (1984) (consummation of abandonment terminates the agency's jurisdiction); *Baros v. Tex. Mexican Ry.*, 400 F.3d 228, 234 (5th Cir. 2005) (“Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board's] jurisdiction terminates.”) (internal citation omitted).⁹ Invocation of the Trails Act can keep a rail

⁷ ORDC states that it anticipates that sometime in the near future Ohi-Rail will seek authority to discontinue service. (Pet. 3.)

⁸ ORDC states that it is “categorically exempt from the Board's jurisdiction,” citing Ohi-Rail Corp., Docket No. FD 30986. (Pet. 10 & n.15.) In Ohi-Rail Corp., the ICC stated that “[t]he purchase by Ohio of the Conrail line under section 308(e) of the 3R Act did not require [ICC] authorization under 49 U.S.C. 10901 or 11343.” Ohi-Rail Corp., FD 30986, slip op. at 1 n.2.

⁹ Prior to 1996, in order to determine if a rail carrier had consummated an abandonment, the agency employed a case-by-case evaluation of all the facts and circumstances to ascertain

line that has been authorized for abandonment within the Board’s jurisdiction and within the interstate rail network by allowing it to be rail banked and used as an interim trail. See 16 U.S.C. § 1247(d) (rail banked lines “shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.”) However, where an abandonment has been consummated, the Board no longer has jurisdiction over a line and cannot consider requests for interim trail use/rail banking under the Trails Act. See, e.g., Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cty., Iowa, AB 1269 (Sub-No. 1X), slip op. at 3 (STB served Apr. 6, 2020) (finding no jurisdiction to authorize interim trail use/rail banking over an abandoned line); Ill. Cent. Gulf R.R., 5 I.C.C.2d at 1062-63 (same).

Here, before the Board can determine whether ORDC may pursue interim trail use/rail banking under the Trails Act, it must first determine whether the Line remains within its jurisdiction. ORDC states that the Line was “authorized for abandonment but not fully abandoned” when ORTA acquired it from Conrail, (Pet. 2, 4-5), and that Conrail was statutorily barred under NERSA from consummating the abandonment, (*id.* at 4-5, 12). The notice of exemption authorizing Ohi-Rail’s operations on the Line, which ORDC includes as Exhibit E to its petition, states that ODOT purchased the Line from Conrail “pursuant to section 308(e) of the [3R Act], after Conrail had filed a[n] application under section 308 to abandon” the Line. See Ohi-Rail Corp., FD 30986, slip op. at 1. In addition, according to ORDC, ORTA purchased the Line on July 30, 1982, (Pet. 5), 17 days after the ICC published the appraisal in the Federal Register, implying that Conrail received an offer from ORTA to purchase the Line within the 120-day period prescribed under section 308(e) of NERSA.¹⁰ Thus, there is evidence that an acquisition occurred under section 308(e)(3)(A) of NERSA and that Conrail did not consummate the abandonment.

However, the Board has also located documents in its own records that would suggest that the abandonment had been consummated when ORTA acquired the Line. In Docket No. FD 30986, in which Ohi-Rail was authorized to operate the Line, Ohi-Rail filed a letter on February 11, 1987, supplementing its notice of exemption stating that “[t]o the best of Ohi-Rail’s knowledge,” the Line “was the subject of a petition for abandonment filed by [Conrail] in November, 1981,” and “the property was in fact abandoned in March, 1982.” (Ohi-Rail Letter 1, Feb. 11, 1987, Ohi-Rail Corp., FD 30986.)¹¹ In addition, in its application for a modified certificate, MOXV represented that it was “electing to be exempt from ICC jurisdiction since the lines it will operate have been fully abandoned.” (MOXV Appl. 2, Mar. 7, 1983, Moxahala

whether a rail carrier showed a clear intention to remove the line from the national rail network, or if instead the record indicated an intent to preserve the right-of-way for future reactivation of rail service. See, e.g., Ill. Cent. Gulf R.R.—Aban.—in Dewitt & Piatt Ctys., Ill., 5 I.C.C.2d 1054, 1061 (1988) (citing Black v. ICC, 762 F.2d 106, 112-13 (D.C. Cir. 1985)).

¹⁰ ORDC has not submitted any other information that might indicate whether ORTA’s purchase of the Line conformed with section 308(e) of NERSA—such as more detail on ORTA’s offer to purchase the Line, including whether the offer was for at least 75% of the net liquidation value published in the Federal Register.

¹¹ A copy of the February 11, 1987 letter is attached to this decision as Appendix A.

Valley Ry., FD 30141.)¹² Moreover, the ICC indicated that the line had been abandoned when it granted MOXV authority to operate over the Line. See Moxahala Valley, FD 30141, slip op. at 1 (authorizing operation over the lines “abandoned by ConRail [sic]”).

If Conrail consummated the abandonment before ORTA purchased the Line, the Line is no longer within the Board’s jurisdiction, and interim trail use/rail banking under the Trails Act is unavailable. See Iowa Traction Ry., AB 1269 (Sub-No. 1X), slip op. at 3; Ill. Cent. Gulf R.R., 5 I.C.C.2d at 1062-63. Furthermore, if the abandonment was consummated, MOXV’s and Ohi-Rail’s subsequent operations did not return the Line to the agency’s jurisdiction, because authorized operations by a non-owning carrier over an abandoned line places only the transportation service, and not the underlying right-of-way, under the Board’s jurisdiction. See Iowa Traction Ry., AB 1269 (Sub-No. 1X), slip op. at 3; Wisc. Cent. Ltd. v. STB, 112 F.3d 881, 890 (7th Cir. 1997); Dakota Rail, Inc.—Pet. for Exemption from 49 U.S.C. 10901, 10903, & 11301, FD 30721, slip op. at 2 (ICC served Nov. 14, 1985), aff’d sub nom. Winter v. ICC, 828 F.2d 1320 (8th Cir. 1987).

On the other hand, if Conrail did not consummate the abandonment and ORTA purchased the Line under section 308(e)(3)(A) of NERSA, the Line is still within the Board’s jurisdiction. In that event, the Board could provide ORDC with the requested clarification on pursuing interim trail use/rail banking under the Trails Act.

In light of the conflicting information as to whether the Line remains within the Board’s jurisdiction, it would be helpful to hear directly from Conrail on these matters before deciding the merits of ORDC’s petition for declaratory order. Therefore, the Board will request comment (and any relevant supporting information) from Conrail on whether it consummated abandonment of the Line before the 1982 sale to ORTA and, if not, whether that sale was executed pursuant to section 308(e)(3)(A) of NERSA. The Board will serve a copy of this decision on Conrail and request Conrail to comment by August 20, 2020.

It is ordered:

1. Conrail is requested to comment by August 20, 2020, as discussed above.
2. A copy of this decision will be served on Conrail.
3. This decision is effective on its service date.

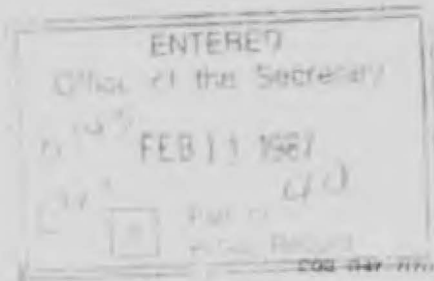
By the Board, Board Members Begeman, Fuchs, and Oberman.

¹² A copy of the March 7, 1983 application is attached to this decision as Appendix B.

Appendix A

WILLIAM E. SLOVER
C. MICHAEL LOFTUS
DONALD G. ADAMS
JOHN H. LEITCH
BELVIN J. EDWELL
ROBERT D. ROSENBERG
PAULINE E. WACHNER

SLOVER & LOFTUS
ATTORNEYS AT LAW
1024 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036



February 10, 1987

The Honorable Marcia R. McGee
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20421

Re: T.D. No. 30986, Ohi-Rail Corporation d/b/a Ohio Southern
Railroad Company -- Exemption -- Operation of a Line of
Railroad in Perry and Muskingum Counties, Ohio

Dear Madam Secretary:

In accordance with counsel's discussion with Mr. Joseph Lynch of the ICC's Rail Section, this letter is submitted to supplement the information provided to the Commission in the Verified Notice of Exemption filed in the referenced docket by Ohi-Rail Corporation on January 21, 1987.

To the best of Ohi-Rail's knowledge, the property in question was the subject of a petition for abandonment filed by Consolidated Rail Corporation in November, 1981. The petition was approved, and the property was in fact abandoned in March, 1982. In July, 1982, the property was purchased by the State of Ohio. It is our understanding that the State bought the property with the intention of simultaneously entering into an agreement with a new carrier to provide service over it; to the best of our knowledge, the State did not have as its purpose the operation of a line of railroad on its own behalf.

The State of Ohio in fact entered into an agreement for operation of rail carrier service over the line effective March, 1983, with the Moxahala Valley Railroad Company. Service under this agreement continued until September, 1986, when the State's agreement the Moxahala Valley Railroad was terminated and the September 25, 1986 Lease/Operation Agreement appended to the Verified Notice of Exemption in the referenced docket was entered into. Under this Agreement, Ohi-Rail, doing business as Ohio Southern Railroad Company, undertook to provide rail common carrier service as successor to the Moxahala Valley Railroad.

Th Hon. Noreta R. McGee
February 10, 1987
Page 2



The above represents Ohi-Rail's best knowledge as to the background of the transaction giving rise to the filing of the referenced Notice. We would ask that this letter be received and filed as a supplement to said Notice.

Respectfully submitted,

Kelvin J. Dowd
Attorney for
Ohi-Rail Corporation

KJD:mfw

cc: Mr. Joseph Lynch

Blue Mountain

Management

FILE IN DOCKET

404 Old Farm Road
Wynonah, PA 19095
(215) 887-2910RECEIVED
FINANCE SUPPLY UNIT

MAR 7 1983

March 3, 1983

INTERSTATE COMMERCE
COMMISSIONTo the Secretary
Interstate Commerce Commission
Washington, D. C. 20425

F.D. 30141

To The Secretary:

Enclosed please find the Moxahala Valley Railway Company application for a Modified Certificate of Public Convenience and Necessity. Please contact the Fultonham Station or the above address if there are questions about this application.

FILED

MAR 7 1983

INTERSTATE
COMMERCE COMMISSION

Sincerely,

*W. J. Powers*William J. Powers
Presidentcc: A. J. Mayhew - AAR, Washington
Harvey Paul - RRB, Philadelphia

WJP/tab

INTERSTATE
COMMERCE COMMISSION
RECEIVED

MAR - 7 1983

ADMINISTRATIVE SERVICES
MAIL UNIT

RECEIVED
MAR 7 1983

INTERSTATE COMMERCE
COMMISSION

F.D. 30142

INTERSTATE
COMMERCE COMMISSION
RECEIVED

MAR - 7 1983

ADMINISTRATIVE SERVICES
MAIL UNIT

APPLICATION
FOR A MODIFIED CERTIFICATE
PUBLIC CONVENIENCE AND NECESSITY.

BY: MOXAHALA VALLEY RAILWAY COMPANY
FULTONHAM STATION
FULTONHAM, OHIO
43738

FILED

MAR 7 1983

MARCH 2, 1983

To the:
SECRETARY
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C. 20425

INTERSTATE
COMMERCE COMMISSION

This is to certify to the Interstate Commerce Commission that the Moxahala Valley Railway Company (MOXV), an Ohio corporation organized to act as a carrier by rail, is prepared to restore revenue common carrier rail service over trackage abandoned by The Consolidated Rail Corporation (Conrail) in the Zanesville, Ohio area. MOXV will be a Class III railroad operating with a Modified Certificate of Public Convenience and Necessity as per 49 CFR 1120 Subpart C-1120.21 through 1120.24, and with exemption from 49 USC 10901 and 10903. MOXV will be a common carrier by rail incurring all benefits and responsibilities under 49 USC Subtitle IV. There are no preconditions involving subsidies from the State or shippers associated with the application.

The lines subject to this application were abandoned by Conrail as the result of the destruction of a rail bridge over Moxahala Creek by a derailment and because of a Conrail determination that the lines did not generate sufficient revenue to justify continued operation. After Conrail applied for and was granted permission to abandon the lines, and service had been terminated, the lines were purchased by the State of Ohio through Ohio Rail Transportation Authority (ORTA). The lines acquired total 31.7 miles and radiate from Fultonham Switch to the end points of Wilbren (New Lexington), Glass Rock, and South Zanesville. After an initial unsuccessful attempt to have service restored, ORTA advertised the lines to rail operators on November 2, 1982. MOXV was selected to be awarded the operation on December 17, 1982. On January 25, 1983, ORTA and MOXV reached agreement on a lease/purchase of the lines.

- 1 -



The nature of the MOXV/ORTA agreement is that MOXV will operate the Zanewville lines until July 15, 1983 under lease and then purchase the lines from ORTA. The terms of the lease require MOXV to pay applicable due property taxes and to protect and insure ORTA against claims arising from MOXV operations. The MOXV/ORTA agreement contains provision that MOXV will be eligible to compete with other State rail lines for rail continuation funds passed from the FRA to ORTA. MOXV is required to provide or have patrons provide the matching local share needed to qualify for the FRA funds. At the time of this application, MOXV will not require patrons to provide matching funds.

MOXV/ORTA VALLEY QUALIFICATIONS REGARDING:

§ 1120.21 - SCOPE OF RULES-

If a line of railroad has been fully abandoned and the line has been acquired by a State, a new rail operator may choose to apply for a Modified Certificate. The lines to be operated meet the two qualifications, and as so qualified, MOXV is applying for a Modified Certificate of Public Convenience and Necessity. A copy of this application is being sent to the AAR and the Railroad Retirement Board.

§ 1120.22 - EXEMPTION AND COMMON CARRIER STATUS-

If a line of railroad has been fully abandoned, the new operator can elect to be exempt from the jurisdiction of the ICC. MOXV is electing to be exempt from ICC jurisdiction since the lines it will operate have been fully abandoned. MOXV will be a common carrier by rail as per its agreement with ORTA. MOXV is claiming an exemption from 49 USC 10901 and 10903. As a common carrier, MOXV recognizes that it incurs all the benefits and responsibilities of USC Subtitle IV. The State, through ORTA, has not determined any significant preconditions upon shippers, such as subsidy pre-payments, and so MOXV will not notify shippers of preconditions. MOXV for itself will require a sidetrack agreement with each rail user.

§ 1120.23 - MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY-

(a) As per 1120.21, MOXV is hereby applying for a Modified Certificate of Public Convenience and Necessity. This document is that application.

(b) Required information-

(1) The name and address of the operator:

Moxahala Valley Railway Company
Fultonham Station
Fultonham, Ohio 43738

William J. Powers, President

(i) Articles of incorporation:

Articles of MOXV incorporation are ATTACHMENT I of this document.

(ii) The names and addresses of all officers and directors and a statement indicating any present affiliation each may have with a rail carrier:

PRESIDENT
William J. Powers
404 Old Farm Road
Wyncote, PA 19085

VICE PRESIDENT
Frederic A. Goodman
840 N. Park Street
Columbus, Ohio 43215

ATTORNEY
Marvin E. Rothhaar
702 S. Sixth Street
Columbus, Ohio 43206

All three officers serve as incorporators of the operating railroad. None of the three incorporators/officers have an existing affiliation with any other common carrier by rail.

(iii) Financial responsibility of the applicant:

MOXV will start operations with the following assets:

\$120,000	- Materials and Supplies
\$ 20,000	- Paid Start-up Costs
\$ 30,000	- Working Capital, via Stock Sales
<u>\$170,000</u>	- Total Assets

MOXV will go to local banks to secure loans or make additional stock sales to increase working capital as needed.

MOXV will start operations with the following debts:

<u>\$10,000</u>	- Accounts Payable, insurance
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(2) Information about the prior Abandonment:

The lines to be operated by MOXV were formerly owned by Conrail. They were abandoned through petition to the ICC. ATTACHMENT II to this application is a copy of the abandonment application filed by Conrail and granted by the ICC. MOXV will operate only a portion of the lines subject to AB #167 sub 445N. The specific lines to be operated by MOXV are shown on a map included as ATTACHMENT III to this application. The ICC ruling granting abandonment of the lines was decided March 8, 1982, the service date of the decision was March 12, 1982.

(3) The exact dates of the period of operation which have been agreed upon by the operator and the State:

MOXV has agreed to institute rail operations on the lines by March 11, 1983. MOXV has agreed to complete purchase of the lines from the State by July 15, 1983. The State will not hold MOXV responsible to continue operation if it does not transfer FRA funds to MOXV for bridge repairs by March 25, 1983. Enclosed as a part of the application is a copy of the ORTA/MOXV lease/repurchase agreement, shown as ATTACHMENT IV.

(4) A description of the service to be performed:

MOXV will provide common carrier rail service for freight only to all stations except S. Zanesville until bridge is replaced at MP 22.6].

(i) Description of line to be operated:

The line is located between:

S. Zanesville (MP 19.4) and Wilbren (MP 36.0)
Fultonham Switch (MP 0.0) and E. Fultonham (MP 3.1)
Fultonham (MP 57.47) and Glass Rock (MP 45.60)

At MP 22.6] a 130.5' bridge has been destroyed.

Between E. Fultonham and Fultonham is @ 0.5 miles of track owned by Columbia Cement on which MOXV has operating rights for both through and local switching movements. For more detail of the MOXV operation see ATTACHMENT III - MAP.

(ii) All interline connections:

MOXV will connect with The Baltimore and Ohio Railroad at South Zanesville, Ohio after Bridge 22.6] is rebuilt, @ 9/83.
MOXV will connect with The Consolidated Rail Corporation at New Lexington, Ohio via interchange rights from Wilbren.

(iii) The nature of insurance:

MOXV is protected by California Union Ins. Co. from \$15,000 to \$2,000,000 through policy #ZCV-006461. This policy includes normal required insurance plus foreign line rolling stock and bill of lading. Complete details of MOXV insurance can be had from Alexander & Alexander of Baltimore, MD, and in ATTACHMENT V to this application.

(iv) Any preconditions shippers must meet:

Shippers need to enter into sidetrack agreements with MOXV before they can receive service.

(5) Name and address of any subsidizers:

MOXV will only receive FRA funding through ORTA. Such funds will be for track maintenance and capital improvements, and will be received sporadically.

Ohio Rail Transportation Authority
30 East Broad Street
Suite 3414
State Office Tower
Columbus, Ohio 43215

(6) Subsidizers financial responsibility

ORTA is constitutionally prohibited from placing State funds into a railroad operation. ORTA only passes Federal funds through its offices to MOXV. ORTA has no financial responsibility to support a rail operation. ORTA is the Ohio Designated State Agency.

(c) Tariff requirement:

MOXV will file tariffs describing services and rates as per ICC rules.

§1120.24 - TERMINATION OF SERVICE-

MOXV will be governed by this section concerning termination of service no sooner than 60 days after notice of discontinuation to shippers and the State and the ICC.

This certifies that the above is a true rendering
of MOXV status and plans and is an application to receive
a Modified Certificate of Public Convenience and Necessity.

ATTEST:

MOXAHALA VALLEY RAILWAY CO

Harold T. Bickel

William J. Powers
PRESIDENT

NOTARY:

Sworn to and subscribed before me
this 3rd day of April 1905

Harold T. Bickel

Notary Public

My commission expires March 14, 1905