

SERVICE DATE – DECEMBER 2, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1195X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
SCHUYLKILL & CARBON COUNTIES, PA.

Decided: December 2, 2021

On November 12, 2021, Consolidated Rail Corporation (Conrail) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a railroad line known as the Tresckow Branch, which runs between milepost 0.0 and milepost 7.7 in the Township of Kline in Schuylkill County, Pa., and the Townships of Packer and Banks in Carbon County, Pa. (the Line).

According to Conrail, it is seeking abandonment authority for the Line “out of an abundance of caution.” (Verified Notice 2.) In its Combined Environmental and Historic Report, Conrail states that Lehigh Coal & Navigation Company (Lehigh) leased the Line, which was part of the Lehigh & Susquehanna Railroad System (L & S System), in 1871 to Central Railroad Company of New Jersey (CNJ) for 999 years. (Verified Notice, Ex. D at 9.) In 1963, according to Conrail, the Interstate Commerce Commission (ICC) authorized the Reading Company to purchase the L & S System from Lehigh, subject to CNJ’s rights,¹ and in 1971, the ICC authorized CNJ to abandon the Line.² (*Id.*) Conrail further states that the Line “was apparently taken over” by the Lehigh Valley Railroad Company (Lehigh Valley) in 1972 and “was not designated for transfer to Conrail in the USRA’s Final System Plan.”³ (Verified

¹ See Reading Co.—Purchase—Lehigh & Susquehanna R.R. Sys., 317 I.C.C. 633 (1963).

² The ICC decision states that the Line had been out of service since 1970. See R.D. Timpany, Tr. of the Prop. of the Cent. R.R. of N.J. Aban. of Its Tresckow Branch, in Carbon Cnty., Pa., FD 26659 (Sub-No. 7) (ICC served Aug. 24, 1971).

³ The Pennsylvania Railroad Company merged into the Penn Central Transportation Company (Penn Central) in 1968. Penn Central and seven other northeastern railroads declared bankruptcy in 1970. In response to these bankruptcies, Congress enacted the Regional Rail Reorganization Act of 1973 (3R Act), Pub. L. No. 93-236, 87 Stat. 985 (codified at 45 U.S.C. §§ 701-719), under which the bankrupt railroads were merged into Conrail. The United States Railway Association (USRA) was created by the 3R Act to examine the bankrupt railroads’ properties and identify those lines that would be retained in active service and consequently conveyed to Conrail. The plan, which identified the rail properties to be conveyed to Conrail,

Notice 2, Ex. D at 10.) Conrail states that in 1976, Conrail acquired the property associated with the Line from the trustees of the property of the Reading Company.⁴ (Id., Ex. D at 10.)

Conrail's cautious approach here is understandable, as, based on the information provided, it is unclear whether the Board's abandonment authority is necessary. While it appears that the ICC authorized abandonment in 1971, there is no indication whether CNJ exercised the authority. There is also no indication whether Lehigh Valley received ICC authorization to "take over" the Line in 1972. According to Conrail, the Line was not designated for transfer to it in the Final System Plan but Conrail acquired the property associated with the Line in 1976 pursuant to an order of the Special Court. Finally, Conrail states that "the Line was inactive when it was conveyed to Conrail" in 1976 and "was apparently salvaged long ago," raising further questions regarding the Line's status. (See id., Ex. D at 2.)

In light of the uncertainty surrounding the status of the Line, Conrail will be directed to provide the Board with more information regarding the status of the Line, including any relevant documents and court decisions. In particular, the Board is interested in any evidence demonstrating or indicating whether CNJ exercised the abandonment authority the ICC apparently granted it in 1971. The National Archives and Records Administration may have relevant records if Conrail does not have them in its own files. Conrail will be directed to file the supplement by January 3, 2022. In the meantime, the effective date of this exemption will be postponed pending further Board order.

It is ordered:

1. The effective date of this exemption is postponed pending further Board order.
2. Conrail shall submit the supplemental information described above by January 3, 2022.
3. This decision is effective on its service date.

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

was known as the Final System Plan. The Final System Plan was submitted to Congress on July 26, 1975, and was approved in § 601(e) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat 31 (1976).

⁴ Conrail states that its acquisition was pursuant to the Order of the Special United States District Court (Special Court) established pursuant to Section 209(b) of the 3R Act, by conveyance document RDG-CRC-RP-17.