

SERVICE DATE – APRIL 8, 2024

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

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

CONRAIL ABANDONMENT OF LINES IN ZANESVILLE, OHIO

Decided: April 8, 2024

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

By decision and certificate of interim trail use or abandonment (CITU) served March 13, 2023, the proceeding was reopened and a one-year period was authorized for the Perry County Board of Commissioners (Perry County) to negotiate an interim trail use/railbanking agreement with the Ohio Rail Development Commission, a successor to ORTA, covering 14.8 miles of the rail line ORTA purchased from Conrail in Perry and Muskingum Counties, Ohio (the Line).⁴ Conrail Aban. of Lines in Zanesville, Ohio, AB 167 (Sub-No. 445N), slip op. at 2-3 (STB served Mar. 13, 2023).

On February 29, 2024, Muskingum Valley Park District (MVPD) requested that the Board vacate the CITU served on March 13, 2023, and issue a replacement CITU substituting MVPD as the trail sponsor. (MVPD Request 2-3, Feb. 29, 2024.) According to MVPD, Perry

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

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

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

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

County has decided to terminate interim trail use/railbanking negotiations, and, as a result, MVPD and ORDC began conversations concerning MVPD's replacing Perry County as the trail sponsor for the Line. (Id. at 1.) The request includes a copy of the extant CITU and a statement of MVPD's willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. MVPD acknowledges that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. ORDC filed a reply on March 7, 2024, indicating that it fully supports and consents to MVPD's request. (ORDC Reply 1, Mar. 7, 2024.)

MVPD's request complies with the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the proceeding will be reopened, the CITU served March 13, 2023, will be vacated, and a replacement CITU will be issued. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(c)(2) & (h). If no agreement is reached within one year, ORDC may fully abandon the Line. See 49 C.F.R. § 1152.29(c)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. The CITU served on March 13, 2023, is vacated.
3. A replacement CITU is issued to MVPD as the new interim trail sponsor for the Line's right-of-way effective on the service date of this decision and certificate, for a period of one-year from the service date, until April 8, 2025.
4. If an interim trail use/railbanking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/railbanking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use/railbanking agreement is reached (and thus, interim trail use/railbanking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(c)(2), (h).

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

8. If an agreement for interim trail use/railbanking is reached by April 8, 2025, interim trail/railbanking use may be implemented. If no agreement is reached, ORDC may fully abandon the Line.

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

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