

SERVICE DATE – JULY 21, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1339X

WALKERSVILLE SOUTHERN RAILROAD, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—FREDERICK COUNTY, MD

Digest:¹ The Board denies the joint appeal of the Maryland Transit Administration and Frederick County, Md., of a prior Board decision declining to issue a notice of interim trail use or abandonment.

Decided: July 20, 2025

On March 18, 2024, Walkersville Southern Railroad, Inc. (WSRR), filed a verified notice of exemption to discontinue service over an approximately 2.21-mile rail line (the Line), which is owned by the Maryland Transit Administration (MTA). The Line extends between milepost 65.17, valuation station 3442+61.4, and milepost 67.38, valuation station 3560+00, north of the City of Frederick, in Frederick County, Md. (Joint Appeal 5.) Also on March 18, 2024, Frederick County (the County) filed a request for issuance of a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and explained that it had engaged with MTA to further this goal. Finally, also on March 18, 2024, MTA filed a reply consenting to the County’s request for a NITU. In Walkersville Southern Railroad—Discontinuance of Service Exemption—Frederick County, Md. (May 2024 Decision), AB 1339X (STB served May 24, 2024), the Director of the Board’s Office of Proceedings (the Director) denied the County’s NITU request, finding that the Board lacked jurisdiction to issue a NITU because the Line had previously been abandoned.

On June 13, 2024, MTA and the County (jointly, Appellants) jointly filed an appeal (Joint Appeal) of the May 2024 Decision with the Board. For the reasons explained below, the Board will deny the Joint Appeal.

BACKGROUND

The Line is a segment of a rail line that was formerly owned by the Penn Central Corporation (Penn Central). (WSRR Notice 1.) According to Appellants, in 1972, Hurricane Agnes destroyed a bridge over the Monocacy River “that connected the Line to the interstate railroad network,” which “prompted the discontinuation of service” on the Line. (Joint

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 Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Appeal 19.) The bridge remained out of service until “the 1990s, [when] the State [of Maryland] facilitated the restoration of the bridge.” (Joint Appeal 6.) In July 1975, the Final System Plan (FSP)² was published. The FSP identified “Line No. 199,” which encompassed the Line,³ as being the subject of an interim application for abandonment under section 304(f)⁴ of the 3R Act. USRA, Final System Plan, Vol. II at 528 (July 26, 1975). In 1977, the Board’s predecessor, the Interstate Commerce Commission (ICC), issued a report (ICC Report) at the request of the State of Maryland (the State) evaluating the economic viability of certain light-density lines in Maryland, including the line designated by the FSP as Line No. 199. *Evaluation of Eight Light-Density Rail Lines in Maryland*, 42 Fed. Reg. 20,396 (Apr. 19, 1977). The ICC Report explained that the portion of Line No. 199 referred to herein as “the Line” was out of service and had not been operated since 1972. *Id.* at 20,418-19. According to the ICC Report, only a small section of Line No. 199, located in the City of Frederick between mileposts 67.8 and 68.8 (i.e., adjacent to the Line), was in operation. *Id.* at 20,418. This small segment had been operated by the Chessie System under subsidy pursuant to an ICC emergency service order since 1972. *Id.* at 20,404, 20,407, 20,418. In 1982, the Baltimore & Ohio Railroad Company, the successor to the Chessie System, sought authority from the ICC to operate over the portion of Line No. 199 previously operated by the Chessie System but did not seek authority to operate the Line. *See Balt. & Ohio R.R.—Operation—in Frederick Cnty., Md.*, FD 29920, slip op. at 1 (ICC served May 13, 1982).

MTA’s predecessor acquired the Line from the Penn Central in 1982. (WSRR Notice 1.) According to Appellants, “[p]ursuant to the ICC’s order in [Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions] (CCSS), 363 I.C.C. 132 (1980), MTA’s acquisition did not require the ICC’s authorization and MTA did not become subject to the ICC’s jurisdiction or responsible for a common carrier obligation.” (Joint Appeal 6.) In 1993, the State entered into agreement with WSRR for WSRR to conduct common carrier service over the Line. WSRR Appl. 2, July 26, 1993, Walkersville S. R.R.—Operation

² In response to the bankruptcies of Penn Central and several other northeastern railroads, 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). The 3R Act created the Consolidated Rail Corporation (Conrail) and established the United States Railway Association (USRA) to examine the bankrupt railroads’ properties and identify those lines that would be retained in active service and consequently conveyed to Conrail. USRA’s plan, known as the Final System Plan, was submitted to Congress on July 26, 1975, and implemented in the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976).

³ Line No. 199 extended between milepost 65.0 and milepost 68.8. USRA, Final System Plan, Vol. II, at 497, 528 (July 26, 1975). As noted above, the Line extends between mileposts 65.17 and 67.38.

⁴ The Joint Appeal states that the Line was subject to an interim application for abandonment under section 304(d) of the 3R Act. (Joint Appeal 5.) However, section 304(d) sets forth requirements relating to offers to purchase certain rail lines and does not address interim applications for abandonment. The section of the 3R Act providing for such applications is section 304(f), which is codified, as amended, at 45 U.S.C. § 744(h).

Exemption—Line Owned by Md., FD 32329. WSRR sought a modified rail certificate (modified certificate) from the ICC for authority to operate the Line. See id. In doing so, WSRR represented to the ICC that the Line had been abandoned prior to its acquisition by the State. Id. at 5 (“The line was acquired by the State of Maryland after its abandonment during the formation of Conrail.”). The ICC declined to accept WSRR’s application for a modified certificate and instead considered WSRR’s filing as a notice of exemption. Walkersville S. R.R.—Operation Exemption—Line Owned by Md. (1993 Decision), FD 32329, slip op. at 1 n.1 (ICC served Sept. 30, 1993). Accepting WSRR’s representation, it explained that the Line had already been abandoned when it was acquired by the State. Id. The decision also stated that a modified certificate was not appropriate because no operations had been conducted on the Line at least since 1982 when the Line was acquired by the State, and modified certificates were intended to allow the continuation of an existing service that would otherwise end. Id.

In the May 2024 Decision, the Director explained that the 1993 Decision found that the Line was previously abandoned. May 2024 Decision, AB 1339X, slip op. at 1-2. The May 2024 Decision noted that “if a party that does not own the underlying right-of-way subsequently is authorized to operate over an abandoned line, the transportation service becomes subject to the Board’s jurisdiction, but the underlying right-of-way does not return to the Board’s jurisdiction.” Id. at 2 (citing Wis. Cent. Ltd. v. STB, 112 F.3d 881, 889-90 (7th Cir. 1997), pet. for partial reopening granted sub nom. Wis. & Mich. Ry.—Discontinuance of Serv. Exemption—in Ashland & Iron Cntys., Wis. & Gogebic Cnty., Mich., AB 440X (STB served Oct. 22, 1997); Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No. 1X), slip op. at 3 (STB served Apr. 6, 2020)). The May 2024 Decision further explained that, where the Board does not have jurisdiction over the underlying right-of-way, it cannot issue a NITU under the Trails Act. Id. Accordingly, the May 2024 Decision denied the County’s NITU request. Id. MTA subsequently petitioned for leave to late file an administrative appeal of the May 2024 Decision. The Board granted that petition by decision served August 16, 2024, noting then that it would “address the merits of the [appeal] in a subsequent decision.” Walkersville S. R.R.—Discontinuance of Serv. Exemption—Frederick Cnty., Md. (August 2024 Decision), AB 1339X, slip op. at 2 (STB served Aug. 16, 2024).

DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. § 1011.7(a)(2)(iv), the Board has delegated authority to the Director to determine, after a request for interim trail use/rail banking is filed under 49 C.F.R. § 1152.29, whether the Trails Act is applicable and, where appropriate, to issue a NITU. Appeals of such decisions by the Director determining the applicability and administration of the Trails Act “will be acted on by the entire Board as set forth at 49 C.F.R. § 1011.2(a)(7).” 49 C.F.R. § 1152.25(e)(1). In considering an appeal, the Board considers whether the Director made the correct decision given the circumstances presented. See, e.g., Complaint & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2, NOR 42175, slip op. at 2 (Feb. 6, 2024); Flats Indus. Inc.—Aban. Exemption—in Cleveland, Ohio, AB 1327X, slip op. at 3 (STB served July 19, 2023). In other words, the question in this case is not whether the Director’s decision was correct in light of the evidence and arguments presented in the Joint Appeal but whether the Director’s decision was correct in light of the evidence and argument before the Director at the time of the May 2024

Decision. If the Board were required to consider new evidence and argument on appeal, it could undermine the very purpose of delegation.

Here, the Director made the correct decision given the circumstances presented. As noted above, WSRR had previously represented to the ICC that the Line had been abandoned, and the ICC accordingly treated the Line as abandoned.⁵ The Board continued to treat the Line as abandoned when determining in 2015 that a different line segment had been abandoned. Md. Transit Admin.—Aban. Exemption—in Somerset Cnty., Md., AB 590 (Sub-No. 1X), slip op. at 4 (STB served May 14, 2015) (relying in part on the ICC’s treatment of the Line as abandoned to support a finding that another rail line acquired in the same transaction as the Line was also abandoned). In addition, existing precedent relied on by the Director held that the Board lacked jurisdiction to issue a NITU in a discontinuance proceeding involving an abandoned line. May 2024 Decision, AB 1339X, slip op. at 2 (citing Iowa Traction Ry., AB 1269 (Sub-No. 1X), slip op. at 3; Wis. & Mich. Ry., AB 440X, slip op. at 2-3.) Although the Director having made the proper determination on the record presented is a sufficient basis to deny the Joint Appeal, the Board will nonetheless address the merits of the Joint Appeal as it indicated it would in the August 2024 Decision.

Appellants make two primary arguments in their Joint Appeal. First, they argue that the Director erred in holding that the Board lacked jurisdiction to issue a NITU. Second, Appellants argue that the Board’s conclusion that the Line was previously abandoned is not supported by any evidence. The Board will address each of these in turn.

The Trails Act and Board Jurisdiction. In support of their jurisdictional argument, Appellants rely on certain language in the Trails Act providing that the Board “shall not permit abandonment or discontinuance inconsistent or disruptive of [interim trail] use.” 16 U.S.C. § 1247(d). From this language, Appellants draw a far broader proposition: that the Trails Act “expressly requires” the Board to issue a “NITU in *a discontinuance case* that would fully terminate the Board’s jurisdiction regardless of a prior abandonment.” (Id. at 13 (emphasis added).) According to Appellants, because “[d]iscontinuance [in such cases] is the last step to complete termination of the Board’s jurisdiction,” the discontinuance “triggers the Board’s obligation to issue a NITU upon request.” (Id. at 10.) This proposition, however, is disconnected from the actual language of the Trails Act: while the Trails Act indeed prohibits discontinuance inconsistent with interim trail use, it does not follow that the Trails Act requires that the Board issue a NITU in any “case” where a carrier seeks authority to discontinue, and in fact does discontinue, operations over an abandoned line. And to that point, Appellants do not contend that discontinuance by WSRR (i.e., the termination of its common carrier operations over the Line) is “inconsistent with [interim trail use]” or that such discontinuance should not be “permitted.” 16 U.S.C. § 1247(d).

⁵ Moreover, WSRR’s verified notice (which was filed by counsel for MTA) indicated that both the “Board and MTA subsequently characterized the Line as abandoned,” although the document it cited indicates that WSRR made that representation. (See WSRR Notice 2 (citing 1993 Decision).)

Indeed, the agency has long held that the discontinuance of common carrier operations is not inconsistent with trail use. Rail Abans.—Use of Rts.-of-Way as Trails, EP No. 274, Sub-No. 13, slip op. at 2 (ICC served Feb. 20, 1985) (noting, in a decision proposing regulations implementing the Trails Act and interpreting the above-quoted language of 16 U.S.C. § 1247(d), that “discontinuance of service would not be inconsistent with trail use”). Rather, discontinuance furthers the Trails Act’s purpose in preserving corridors for future railroad use by allowing the rail carrier to terminate service and transfer to a third-party a rail line that it might otherwise abandon. See Preseault v. ICC, 853 F.2d 145, 150 (2d Cir. 1988). Moreover, the Board’s regulations expressly authorize the railroad to discontinue service, cancel tariffs, and salvage track upon issuance of a Certificate of Interim Trail Use or Abandonment (CITU) or NITU. 49 C.F.R. § 1152.29(c)(2), (d)(1). The regulations do not contemplate a situation where a line that has been railbanked under the Trails Act continues to support licensed common carrier operations. Appellants have not even argued for that result, let alone identified any agency precedent where that has been the case.

Moreover, despite Appellants’ argument that the Trails Act “prohibits the Board from allowing . . . discontinuance when presented with a trail use request” in cases where “discontinuance can represent the end of Board jurisdiction,” (Joint Appeal 9), nowhere do they contend that WSRR should be prohibited or precluded from discontinuing service, nor did they request to stay the discontinuance. (MTA Reply 1, Mar. 18, 2024 (stating that MTA supports WSRR’s discontinuance).) As noted above, their position effectively is that in any “case” involving discontinuance of service over an already-abandoned Line, the Board must issue a NITU regardless of whether the discontinuance has been “permit[ted]” by the Board and is otherwise effective. (Joint Appeal 10, 13.) Appellants’ argument and the language of the Trails Act they rely upon are incongruous.

Appellants’ position would also have the Board authorize interim trail use/railbanking on lines over which the Board otherwise has no jurisdiction. But as even Appellants concede, the Trails Act only authorizes the Board “to issue a NITU if [the Board] *retains* jurisdiction over the line or service on the line.” (Id. at 13 (emphasis added).) When a NITU is issued in an abandonment proceeding, it operates as a barrier to the carrier’s consummation authority (i.e., the Board does “permit” the abandonment), and the Board maintains jurisdiction over the line while the NITU remains in effect. Rail Abans.—Use of Rts.-of-Way as Trails, 2 I.C.C.2d 591, 599 (1986). But where, as here, the line has already been abandoned, the Board’s jurisdiction over the right-of-way terminates when the abandonment occurs, and the Board’s jurisdiction over any carrier operations initiated post-abandonment terminate when the discontinuance becomes effective. See Iowa Traction Ry., AB 1269 (Sub-No. 1X), slip op. at 3. Under this second set of circumstances, there is no jurisdiction left to retain.⁶

⁶ If MTA owns the Line’s underlying right-of-way, as it and the County assert, (MTA Reply 1, Mar. 18, 2024; Frederick Cnty. Letter 1, Mar. 18, 2024), MTA does not need the Trails Act to establish a trail or to preserve the possibility of restoring rail service to the Line in the future. The ICC has previously explained that the Trails Act is not needed where, as here, the right-of-way is owned in fee simple and therefore not subject to a reversionary property interest. See Rail Abans., 2 I.C.C.2d at 599 (“[I]f a trail proposal only involves property owned by the

Nor can the Trails Act provide an independent source of jurisdiction. The Trails Act does not address jurisdiction at all, and its language does not provide any indication that issuance of a NITU could function as an independent source of ongoing Board jurisdiction. In fact, the Trails Act's language demonstrates that it only applies to rail lines over which the Board otherwise maintains jurisdiction. It states that "interim use 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." 16 U.S.C. § 1247(d). This language is consistent with the principle that the Board's jurisdiction, including its authority to reauthorize rail service after interim trail use, ends when abandonment is consummated.⁷ See Chevy Chase Land Co. v. United States, 37 Fed. Cl. 545, 554 (1997) (explaining how the Trails Act "treated interim trail use as a discontinuance which preserved ICC jurisdiction over the right-of-way, rather than an abandonment which would terminate ICC jurisdiction and cause any right-of-way held as an easement to revert to the owner of the underlying estate in fee simple"); see also Preseault, 494 U.S. at 8 ("By deeming interim trail use to be like discontinuance rather than abandonment . . . Congress prevented property interests from reverting under state law . . .") (citing H.R. Rep. 98-28 at 8-9). For these reasons, the Board's regulations require dismissal of a trail use request where "abandonment has been consummated." 49 C.F.R. § 1152.29(e)(1); see also Ill. Com. Comm'n v. ICC, 848 F.2d 1246, 1261 (D.C. Cir. 1988) (acknowledging ICC rule permitting acceptance of late-filed trail use requests "so long as the agency still retains jurisdiction to do so"). Because the Trails Act is not

carrier, and the trail developer does not want to risk losing the right-of-way to restored service, section 1247(d) should not be invoked. Rather, the developer should let the railroad consummate abandonment and then purchase or lease the right-of-way from the railroad"); Wallkill Valley R.R.—Operation Exemption—Between Kingston & New Paltz, N.Y., FD 31909, slip op. at 3 (ICC served Dec. 28, 1992) ("Wallkill does not need Commission authority to operate a trail on its property. . . . Its attempt to use the Trails Act here is beyond the scope of the statute, which is to preserve active rail rights-of-way held by easements or similar property interests where, upon abandonment, the property would revert to adjoining landowners"); Pol'y Statement on Rails to Trails Conversions, 55 Fed. Reg. 4,026, 4,026 n.3 (Feb. 6, 1990) ("The Trails Act also applies to land the railroad owned in fee simple. However, there were already provisions in 49 U.S.C. 10906 for acquisition of abandoned rights-of-way for other public purposes, including trails. The 1983 amendment to the Trails Act was directed in large part to the fact that section 10906 did not prevent reversionary property rights from vesting.").

⁷ Rail Abans., 2 I.C.C.2d at 599 ("[I]f part or all of the involved right-of-way is held under an easement or reversionary interest, the trail developer would need to invoke section 1247(d) to prevent reversion of the easement property and maintain the integrity of the transportation corridor. Rights-of-way developed as trails under section 1247(d) technically do not lose their status as lines of a railroad subject to Commission jurisdiction, because by law they are rail banked and are not treated as abandoned property for purposes of any law. If a railroad intends to permit interim trail use, it will not abandon the line, and the property will remain under the Commission's jurisdiction so that the Commission can, if requested, exercise its regulatory authority to reauthorize rail operations in the future."); see also Preseault v. ICC, 494 U.S. 1, 7-8 (1990); H.R. Rep. No. 98-28, at 8-9 (1983) ("The concept of attempting to establish trails only after the formal abandonment of a railroad right-of-way is self-defeating; once a right-of-way is abandoned for railroad purposes there may be nothing left for trail use.").

an independent source of Board jurisdiction, there is no basis by which the Board may issue a NITU over an abandoned line.

Appellants further argue that the distinction between jurisdiction over WSRR's service and jurisdiction over the underlying right-of-way relied on by the May 2024 Decision is contrary to the definition of "transportation" under 49 U.S.C. § 10102(9)(A).⁸ As explained above, the May 2024 Decision, relying on Wisconsin Central Ltd. v. STB, 112 F.3d 881 (7th Cir. 1997), found that while the Board had jurisdiction over WSRR's service, the prior abandonment of the Line stripped it of jurisdiction over the underlying right-of-way and therefore, the jurisdiction to issue a NITU. According to Appellants, the definition of "transportation" precludes any separation of the Board's jurisdiction over rail service from its jurisdiction over the property used to provide rail service. However, this argument cannot be reconciled with Wisconsin Central. In that case, the court held that the ICC did not have jurisdiction to impose a common carrier obligation on an owner of an abandoned line where rail service had been provided by another entity. The court reasoned that, although the Board had jurisdiction over the operator and its service, the Board lost its jurisdiction over the underlying right-of-way and its owner when the line was abandoned, and the act of leasing the line to another entity to provide service did not reestablish such jurisdiction. Wis. Cent. Ltd. v. STB, 112 F.3d at 892. Thus, Wisconsin Central clearly establishes that jurisdiction over rail service can be separated from jurisdiction over the underlying right-of-way.⁹

Appellants claim that, even if the holding of Wisconsin Central limits the Board's jurisdiction to otherwise regulate an abandoned line, it does not limit the Board's jurisdiction to issue a NITU because that jurisdiction is provided by the plain language of the Trails Act. Specifically, Appellants argue that "the limits on Board jurisdiction to impose a common carrier obligation or to otherwise regulate an abandoned line under the Board's general authority do not control here, where the Trails Act expressly confers jurisdiction to issue a NITU when a line is to be abandoned or service is to be discontinued." (Joint Appeal 15.) However, as already explained, the language of the Trails Act makes clear that it is not an independent source of Board jurisdiction.

⁸ Section 10102(9)(A) defines "transportation" to include: "a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use."

⁹ Appellants also argue that the separation of jurisdiction over rail service and jurisdiction over the underlying right-of-way would lead to absurd results, such as a line that has been inactive for years but not legally abandoned being eligible for railbanking, while a line that was abandoned but reactivated being ineligible for railbanking. (Joint Appeal 12.) However, when viewed through the lens of the purpose of the Trails Act—to prevent abandonments from causing rights-of-way over which railroads hold only an easement from reverting under state property law—such results are entirely reasonable. A line that has been inactive for years but not abandoned remains eligible for railbanking because an abandonment could cause a reversionary interest to vest. A line that was abandoned but reactivated is ineligible for railbanking because the prior abandonment may have already caused reversionary interests, if any, to vest, and in that case, there would be no reversionary interests left to protect against.

Appellants also point to cases in which the Board previously granted NITUs in discontinuance proceedings involving abandoned lines, although they acknowledge that “[s]ubsequent Board decisions have cast doubt on the reasoning” in the cited decisions. (Joint Appeal 9 (citing Chillicothe-Brunswick Rail Maint. Auth.—Discontinuance Exemption—in Livingston, Linn, & Chariton Cntys., Mo., AB 1001X et al. (STB served Jan. 15, 2008); Pioneer Indus. Ry.—Discontinuance of Serv. Exemption—Line in Peoria Cnty., Ill., AB 1066 (Sub-No. 1X) (STB served Apr. 16, 2010)); Joint Appeal 10 n.8). But the Board did not merely “cast doubt” on those decisions. Rather, the Board held that they were wrongly decided and had relied on a misunderstanding of the facts in a prior case. See Iowa Traction Ry., AB 1269 (Sub-No. 1X), slip op. at 5 (“Under the court and agency precedent cited above, because the line in Chillicothe had been removed from the national rail system and thus from the Board’s jurisdiction, the Trails Act was not available. The decision in Chillicothe appears to have been based on an incorrect understanding that the abandonment in State of Vermont had been consummated when the NITU was issued when in fact . . . it had not.”); *id.* at 5 n.10 (“In Pioneer, as in Chillicothe, the Board properly granted the discontinuance of service, but, appearing to rely on an incorrect understanding of State of Vermont and Chillicothe, issued a NITU even though the line at issue had been fully abandoned previously.”) Accordingly, the cases cited by Appellants—Chillicothe and Pioneer—are no longer good law and were expressly disavowed by the Board in Iowa Traction Ry.

Prior Abandonment of the Line. In support of their argument that the Line had not been previously abandoned, Appellants argue that the Board should essentially disregard WSRR’s past representation to that effect and the Board’s subsequent and consistent treatment of the Line as abandoned. (Joint Appeal 17.) They contend that other evidence indicates that the Line had not been abandoned. (*Id.* at 17-20.) Appellants, as the party asking the Board to retract its prior finding that the Line was abandoned, bear the burden of proof. See E. Ala. Ry.—Pet. for Declaratory Ord., FD 35583, slip op. at 4 (STB served Mar. 9, 2012) (“Generally, the proponent of an agency order bears the burden of proof.”) (citing 5 U.S.C. § 556(d)); Union Pac. R.R.—Pet. for Declaratory Ord., FD 35504, slip op. at 4 (STB served Dec. 12, 2011) (“[Petitioner] will bear the burden of proof because it is the party seeking the declaratory order.”). This standard of proof is significant here, where the relevant events occurred over 40 years ago, and the ICC ruled on the issue more than 30 years ago. “[T]he need for administrative finality dictates that the hurdle to be overcome by [a party seeking to have us reverse a final action] increases substantially as time passes.” Union Pac. R.R.—Aban. Exemption—in Rio Grande & Mineral Cntys., AB 33 (Sub-No. 132X) (STB served June 22, 2004) (citing CSX Transp.—Aban.—Between Bloomington & Montezuma, in Parke Cnty., Ind., AB 55 (Sub-No. 486) et al., slip op. at 8 n.10 (STB served Sept. 13, 2002), *aff’d sub nom. Montezuma Grain Co. v. STB*, 339 F.3d 535 (7th Cir. 2003)). If the Board were to overturn a finding made over 30 years ago regarding the jurisdictional status of a line based on inconclusive evidence, it would seriously undermine the ability of carriers, shippers, and other interested parties to rely on the finality of prior Board and ICC decisions, which is essential to the efficient operation of the interstate rail network. As explained further below, the Board finds that Appellants have not met their burden.

It is undisputed that in 1993, WSRR, the carrier hired by the State to operate over the Line, represented in its application for a modified certificate filed with the ICC that the Line was

abandoned prior to the State's acquisition, and that the agency thereafter considered the Line to be abandoned. Appellants argue that WSRR's representation (and by implication the agency's subsequent treatment) was "casual[]" or "careless." (Joint Appeal 20.) They also contend that WSRR was not even "required to show abandonment" because a modified certificate applies both to rail lines that have been fully abandoned or approved for abandonment. (*Id.* (citing 49 C.F.R. § 1150.21 (1993)).)

However, WSRR's representation that the Line had already been abandoned was in direct response to agency regulations (in effect then and now), which specifically require those seeking a modified certificate to provide "information about the prior abandonment," including the "status" of the line.¹⁰ 49 C.F.R. § 1150.23. Moreover, there may have been good reason for WSRR to have represented that the Line had been abandoned. Contrary to MTA's suggestion otherwise, there is a distinction between how "fully abandoned" lines and lines "approved for abandonment" are treated in the agency's regulations. Whereas acquisition of a fully abandoned line (be it by a State or anyone else) "is not subject to the jurisdiction of the [Board]," the acquisition by a State "of a line approved for abandonment and not yet fully abandoned is exempted from the Board's jurisdiction." 49 C.F.R. § 1150.22; *see also* CCSS, 363 I.C.C. at 135. Agency precedent, including cases contemporaneous with the 1993 Decision, indicated that the "exemption [was] designed to facilitate the continuation of rail service over marginal lines." Pa. Dep't of Transp.—Aban. Exemption—Portion of Valley Branch, AB 373X, slip op. at 3 (ICC served Apr. 23, 1993) (citing CCSS, 363 I.C.C. at 136). The regulations contemplate that service would be continued in one of two ways: either by the State "operat[ing] the line itself, [in which case] it will be considered a common carrier," or by the State "contract[ing] with an operator to provide service over the line, [in which case] only the operator incurs a common carrier obligation." 49 C.F.R. § 1150.22.

Here, when the State acquired the Line from Penn Central, there was no service to be "continue[d]." The Line had not been operated since 1972.¹¹ Moreover, MTA makes clear that

¹⁰ Appellants contend that, because "WSRR was not the owner of the Line," it could "not make an admission regarding ownership rights and was without legal authority to determine the status of the Line." (Joint Appeal 20.) But there is no dispute that WSRR entered into a contract with the State requiring WSRR to obtain a modified certificate from the ICC to operate the Line and that WSRR operated the Line at the State's behest. *See* WSRR Appl. 2, App. B, July 26, 1993, Walkersville S. R.R.—Operation Exemption—Line Owned by Md., FD 32329; *see also* 49 C.F.R. §§ 1150.22, 1150.24 (permitting the State, through the operational agreement, to set preconditions to service and the duration of service). The Board should be entitled to rely upon information provided by state-contracted operators under 49 C.F.R. § 1150.23.

¹¹ The Chessie System had been conducting subsidized operations over a small segment of Line No. 199 in Frederick, adjacent to the Line, but subsidized operations were not conducted on the Line itself. 42 Fed. Reg. at 20,404, 20,407, 20,418. Because § 304(c)(1) of the 3R Act states that no rail property can be abandoned under that section "after 2 years from the effective date of the final system plan [November 9, 1975] or more than 2 years after the final payment of any rail service continuation subsidy is received, whichever is later," if not already abandoned, the Line may no longer even have been approved for abandonment when the State acquired it in

it did not become “responsible for a common carrier obligation.” (Joint Appeal 6.) And the State did not attempt to secure an operator until it hired WSRR in 1993. Under these facts, MTA’s use of the CCSS exemption for acquisition of lines approved for abandonment, but not fully abandoned, may have been viewed by the ICC as inappropriate.¹² Indeed, the ICC expressly declined to issue a modified certificate to WSRR under CCSS for this same reason: because there had been no continued service on the Line since the time of its 1982 acquisition. Walkersville S. R.R., FD 32329, slip op. at 1 n.1. These facts also distinguish this case from Norfolk & Western Railway—Abandonment Exemption—between Kokomo & Rochester in Howard, Miami, & Fulton Counties, Ind., cited by Appellants, (Joint Appeal 17), where the Board found that reference to “abandonment” in a deed was a “drafting error and was intended only to refer to the fact that service over the line had ceased.” AB 290 (Sub-No. 168X), slip op. at 6 (STB served May 4, 2005). Rather than a “careless” reference or “error,” WSRR’s representation that the Line had been abandoned, and the ICC’s subsequent treatment of it as such, provide a ready explanation for how the State could have lawfully acquired a line that may not have otherwise qualified for the CCSS exemption.

Appellants’ evidence is also insufficient to show that the Line had not in fact been abandoned. To abandon a rail line, a railroad must first obtain abandonment authority from the Board (or, prior to 1996, the ICC), and then the railroad must consummate that abandonment authority. Landowners—Motion for Declaratory Ord. & Injunctive Relief, AB 1065 (Sub-No. 1X), slip op. at 4 (STB served Jan. 27, 2020). Appellants argue unpersuasively that, in this case, neither step in the abandonment process was completed. (Joint Appeal 18.)

Regarding abandonment authority, Appellants assert that abandonment authorizations under section 304 of the 3R Act required railroads to provide notice to various parties, including local governments and state transportation agencies. (Id.) They further contend that abandonment of the Line was not authorized because MTA has been unable to find any record that the State ever received such notice. (Id.) However, at the time the FSP was issued, Line No. 199, which included the Line, was the subject of a pending abandonment application under

1982. If the Line had never been abandoned, and MTA acquired it after abandonment authority had expired, MTA would have been required to seek ICC authority to acquire the Line and would have acquired a common carrier obligation. See, e.g., Reg’l Transp. Dist.—Acquis. Exemption—Union Pac. R.R. in Adams, Boulder, Broomfield, & Weld, Colo., FD 35252, slip op. at 2-3 (STB served June 29, 2010) (stating that the acquisition of an active rail line by a state generally requires Board approval and includes a common carrier obligation except where the selling carrier retains an exclusive, perpetual easement to permit it to continue to provide common carrier freight service). This is further reason to believe WSRR’s identification of the Line as abandoned was not a “careless” or “casual” reference, as MTA claims.

¹² Additionally, although CCSS exempted states’ acquisition of lines approved for abandonment from ICC regulation, it required states to notify the ICC of such acquisitions. CCSS, 363 I.C.C. at 135. Thus, if the Line had been approved for abandonment, but not fully abandoned when the State acquired it, as Appellants contend, the State should have submitted such notice to the ICC. Appellants have not provided proof of this notice, despite their representations that MTA searched the State’s records related to the acquisition of the Line. (Joint Appeal, Ex. A, V.S. John Bentley Thomas 2.)

the “Interim Abandonment” procedures of section 304(f).¹³ Final System Plan, Vol. II, at 528. These interim abandonment procedures could be used by carriers seeking to abandon lines between January 2, 1974 (when the 3R Act was passed) and November 9, 1975 (when the FSP was approved by Congress), and importantly, had no notice requirements. See 3R Act, 87 Stat. 985, 1008; Consol. Rail Corp. v. Illinois, 423 F. Supp. 941, 951 (Reg’l Rail Reorg. Ct. 1976). In contrast, section 304(b) of the 3R Act could be used only after the FSP became effective. 3R Act § 304(a)(1), (b)(1), 87 Stat. 985, 1008 (stating that discontinuance of service on the subject rail lines can occur only after a railroad provides 60 days’ notice of its intent to discontinue, which may not be filed sooner than 30 days after the effective date of the FSP, and that abandonment may not occur sooner than 120 days after the effective date of discontinuance). Thus, because the record suggests that any abandonment would have been achieved through section 304(f), the fact that MTA was unable to locate the notice required by section 304(b) does not weigh in favor of the conclusion that Penn Central failed to obtain abandonment authority.

Appellants go on to argue that, even if abandonment authority for the Line was obtained, the available evidence indicates that the Line was intended to remain part of the interstate rail network, and abandonment authority was never consummated. (Joint Appeal 18.) The Board finds that Appellants’ evidence does not favor a conclusion that abandonment authority was not consummated, as described below.¹⁴

In 1976, the State asked the ICC to evaluate the economic viability of providing rail service over several lines in Maryland, including the Line. 42 Fed. Reg. at 20,421. Appellants

¹³ Section 304(f) of the 3R Act states:

After the date of enactment of this Act, no railroad in reorganization may discontinue service or abandon any line of railroad other than in accordance with the provisions of this Act, unless it is authorized to do so by the Association and unless no affected State or local or regional transportation authority reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.

¹⁴ The Board also notes that there is precedent indicating that, for abandonments under section 304 of the 3R Act, fulfilling the requirements of section 304 was considered sufficient to demonstrate consummation without further action. Specifically, the Board has explained that providing the required 30 days’ notice of intent to abandon as required by section 304(b) is sufficient to establish that a line was abandoned. Ulster & Del. Ry. Revitalization Corp., FD 36164, slip op. at 5-6 (“Rail lines excluded from transfer to Conrail under the FSP were eligible to be abandoned, without receiving authority from the [ICC], under simplified notice procedures pursuant to the 3R Act. . . . [B]ecause there is sufficient documentary evidence that the requirements of 45 U.S.C. § 744(b) were satisfied . . . the Board finds that the Line was abandoned in 1977.”). This case suggests that the 3R Act, together with the FSP, provided abandonment authority, and that complying with the requirements of section 304 constituted consummation of that authority. Neither the ICC nor the Board has addressed whether the same reasoning applies to abandonments pursuant to section 304(f), but the Board sees no basis for a distinction.

argue that the State would not have included the Line in this request if it had already been abandoned by Penn Central. (Joint Appeal 19.) However, the Line could have been abandoned after the State made its request to the ICC, or the State could have been interested in the Line's future viability to determine whether it should facilitate reestablishing common carrier service over an abandoned line. Thus, the State's request to the ICC sheds no light on whether the Line was abandoned. Appellants further note that the ICC report stated that "[t]he line has been operated in the same manner since 1972" without reference to any abandonment. (*Id.*) However, as the ICC Report explains, the segment of Line No. 199 constituting the Line was out of service, and only a small segment of Line No. 199 in Frederick between milepost 67.8 and milepost 68.8 was being operated under subsidy pursuant to an emergency service order from the ICC. 42 Fed. Reg. at 20,404, 20,407, 20,418; see also Md. Dep't of State Plan., Areas of Critical Concern: Designation Rep., 3-36 to 3-37 (1981), <https://archive.org/details/areasofcriticals819mary>. Thus, the statement in the ICC Report that Line No. 199 had been operated in the same manner since 1972 establishes only that the Line had not been active since at least 1972. Appellants appear to acknowledge this, stating that "Hurricane Agnes destroyed a bridge over the Monocacy River that connected the Line to the interstate railroad network in 1972, and that damage prompted the discontinuation of service." (Joint Appeal 19.) The ICC Report does not provide any evidence to support Appellants' claim that abandonment authority was never consummated.

Appellants also point to language in a 1981 purchase and sale agreement between the State and Penn Central (1981 Agreement) as evidence that the Line was never abandoned. (Joint Appeal 19-20.) That agreement involved the State's purchase of numerous rail lines totaling about 195 miles of track, including a rail line encompassing the Line, from Penn Central. (See Joint Appeal, Ex. B.) It stated that those "lines were leased to the State April 1, 1976, for operation and maintenance by an Operator designated by the State"¹⁵ and that the State "desire[d] to acquire th[ose] lines in order to continue rail service," and was not limited to the Line at issue here. (Joint Appeal, Ex. B.) As noted above, the ICC Report and the Joint Appeal indicate that the Line had not been in operation since 1972. Thus, to the extent that the language from the 1981 Agreement can be read to indicate that service on the lines was active and would be continued by the State, that language was not applicable to the Line. Further, a 1981 study by the Maryland Department of State Planning, assessing "both operating and recently abandoned or disused rail lines," noted that the State "felt that purchase is the best way to preserve abandoned rail corridors for future use." Maryland Department of State Planning, Areas of Critical Concern: Designation Report, 3-1, 3-5. This study indicates that during the relevant timeframe Maryland was interested in purchasing both active and abandoned lines. The State's purchase of the Line therefore does not suggest that the Line had not already been abandoned.

Appellants also point to the fact that, after the acquisition of the Line in 1982, the State and MTA facilitated restoration of the Monocacy River bridge and supported WSRR's application for authority to operate the Line, as evidence that MTA intended to continue rail

¹⁵ The ICC Report was issued in April 1977, and contradicts Appellants' claim that the Line was leased by the State in 1976, (Joint Appeal 19), as the Report states, "[t]he Maryland Department of Transportation will negotiate with Penn Central to lease this track." 42 Fed. Reg. at 20,404.

service rather than abandon the Line. (Joint Appeal 20-21.) But restoring the bridge and supporting WSRR's application are not inconsistent with a prior abandonment. MTA and the State could have taken those actions to restore service over an abandoned line. Indeed, the ICC granted WSRR operating authority with the understanding that it was restoring service on an abandoned line. See Walkersville S. R.R., FD 32329, slip op. at 1 n.1. Moreover, MTA waited approximately a decade after acquisition to facilitate the restoration of the bridge that "connected the Line to the interstate railroad network." (See Joint Appeal 6, 21.) In addition, WSRR, which was not designated by the State as the operator of the Line until more than 10 years after the acquisition, described the process of improving the Line prior to seeking operating authority as a "three year effort." WSRR Appl. 2, Aug. 2, 1993, Walkersville S. R.R., FD 32329.

In short, Appellants' evidence fails to demonstrate that the Line was not abandoned. Accordingly, the Board finds that Appellants have not met their burden of proof with respect to their claim that the Line was never abandoned.

Therefore, for the reasons explained above, the Joint Appeal will be denied.

It is ordered:

1. The Joint Appeal is denied.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.