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245308

ENTERED
Office of Proceedings
March 14, 2018
Part of
Public Record

March 8, 2018

Ms. Cynthia T. Brown, Chief
Administration Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. FD 36169 - Chester County, Pennsylvania Petition for
Declaratory Order – Norfolk Southern Railway Company

Dear Ms. Brown:

I am filing on behalf of Chester County, Pennsylvania an original and ten copies of a
Petition for Declaratory Order under 49 U.S.C. §1321 and 5 U.S.C. §554(e). I am also
requesting that given the public status of Chester County, Pennsylvania the Board waive the
filing fee for this Petition.

Please date stamp and return a copy of this cover letter as proof of filing in the enclosed
self addressed, stamped envelope provided.

**FILED
March 14, 2018
SURFACE
TRANSPORTATION BOARD**

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.

RRW/bab
xc: David Stauffer
Enclosures

FILING FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. FD 36169

CHESTER COUNTY, PENNSYLVANIA
PETITION FOR DECLARATORY ORDER – NORFOLK SOUTHERN
RAILWAY COMPANY

Richard R. Wilson, Esq.
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518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152

Attorney for Petitioner

March 8, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. FD 36169

CHESTER COUNTY, PENNSYLVANIA
PETITION FOR DECLARATORY ORDER – NORFOLK SOUTHERN
RAILWAY COMPANY

I. INTRODUCTION

Pursuant to 49 U.S.C. §1321 and 5 U.S.C. §554(e), Chester County, Pennsylvania (“the County”) petitions the Surface Transportation Board (“the Board”) to issue a declaratory order as to whether a line segment of railroad located in Chester County, Pennsylvania known as the Schuylkill Secondary (“the Line”) has been abandoned. The County submits the line has been abandoned, and it is outside of the Board’s jurisdiction. Accordingly, the acquisition of the Line by the County and its conversion to a rail trail can not be undertaken pursuant to the National Trails Act (“NTA”) and the Board should issue a decision to that effect.

II. STATEMENT OF FACTS

Chester County, Pennsylvania, is a municipal governmental entity under Title 16 Pa.C.S.A. Counties. The County seeks to acquire the Line from Norfolk Southern Corporation to preserve and dedicate it as a portion of the County’s historic network of recreational rail trails.

In order for the Board to appreciate the circumstances behind the County’s Petition, the County presents necessary background information. The Line is a segment

of the Schuylkill Secondary which under the Final System Plan was conveyed to Consolidated Rail Corporation. See Final System Line Code No. 1129. (Exhibit A) Conrail filed an abandonment proceeding for this line segment extending between Linfield Road and State Route 422 at Pottstown, PA (Exhibit B) with the Interstate Commerce Commission on April 9, 1984 in ICC Docket No. AB-167 (Sub No. 710N). By decision issued on July 13, 1984, the Interstate Commerce Commission authorized Conrail to abandon the line and directed that if the authority granted by the ICC decision was exercised, Conrail should advise the Commission in writing immediately after abandonment of the line of the date on which the abandonment actually took place. (Exhibit C) Recent inquiries at the STB indicate that there is no record of Conrail filing an abandonment consummation letter for this line segment.¹ Norfolk Southern Railway Company, the present owner of the line segment, has advised that it thinks the line segment was abandoned by Conrail but is unable to confirm that fact.

However, in 1993, the Pennsylvania Public Utility Commission issued an Order granting Conrail's request to abolish four at grade crossings on this line segment. (Exhibit D) On Page 2 of the PUC order granting Conrail's application for abolishing five grade crossings along the line segment, the PUC stated "the Interstate Commerce Commission at Docket No. AB-167 (Sub No. 710N) approved the abandonment of the Pottstown (Schuylkill) Branch involved in this proceeding". Since Conrail was the applicant in this PUC crossing abolition proceeding and represented to the Pennsylvania

¹ A possible explanation for this omission is that in 1984, the Interstate Commerce Commission dispensed with requiring railroads to file written notices of consummation and simply allowed the railroads to abandon track within one year subsequent to abandonment authorization orders. Not until January 23, 1997 did the STB publish new regulations requiring the filing of written consummation notices and as a consequence, the consummated status of the July 13, 1984 ICC decision in AB-167 (Sub No. 710N) is uncertain.

Public Utility Commission that the line had been abandoned, Norfolk Southern, as the successor to Conrail, is estopped to deny that the Line was abandoned in 1984.

Prior to the enactment of the ICC Termination Act of 1995, the procedures regarding the effectiveness of an abandonment were more informal. In the absence of Conrail filing a Letter of Consummation, the Board may look to the applicant's intent to determine whether an abandonment had been fully consummated. Becker v. STB, 132 F3d 60 (D.C. Cir. 1997), Black v. ICC, 762 F2d 106, 114 (D.C. Cir. 1985). The critical question therefore is whether the applicant demonstrated a permanent intent to terminate rail service forever. Such an intent was explicitly demonstrated by Conrail to the Pennsylvania Public Utility Commission in the 1993 crossing abolition application. Moreover, the abolishment by the PUC of these four at grade road crossings and Conrail's commitment to the PaPUC to remove its tracks from the line segment demonstrated that Conrail intended to permanently remove this line segment from the National Rail Transportation Network. Thus, it is evident that Conrail fully intended to abandon this line segment of the Schuylkill Secondary and to terminate all rail service on the line in 1984. Given the foregoing facts, Chester County seeks a Declaratory Order from the STB ruling that since 1984, the line has been abandoned as confirmed by Conrail in the 1993 PaPUC order.

IV. CONCLUSION

Chester County requests that the Board issue a Declaratory Order finding that the line segment between Linfield Road and State Route 422 was fully abandoned by Conrail

in 1984 as confirmed by the 1993 PaPUC crossing abolition order.

Respectfully submitted,

A handwritten signature in cursive script, reading "Richard R. Wilson". The signature is written in dark ink and is positioned above a horizontal line.

Richard R. Wilson, P.C.
Richard R. Wilson, Esq.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152

VERIFICATION

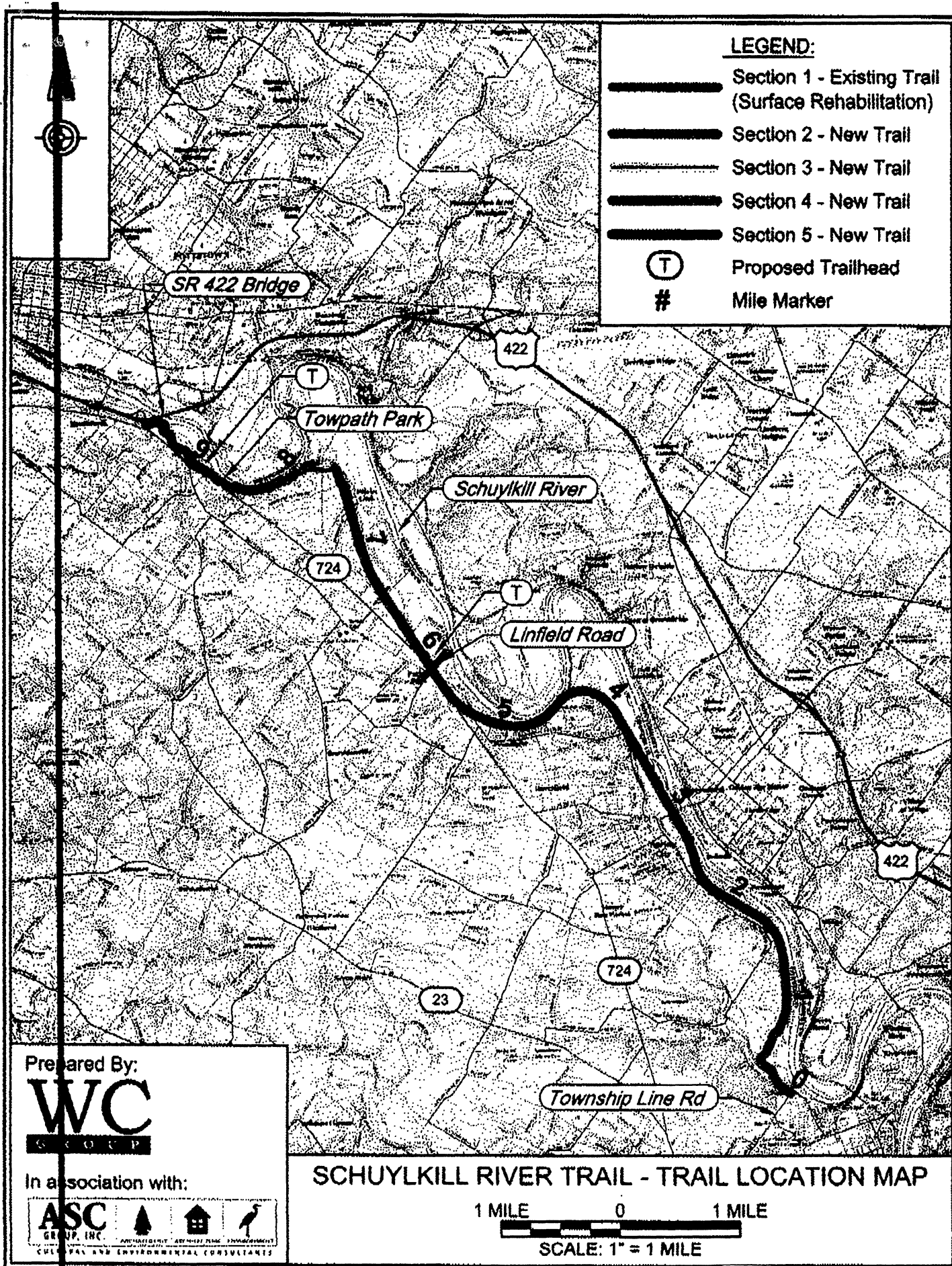
I, David Stauffer, Capital Projects Coordinator for Chester County, PA, verify that the statements made in the foregoing Petition for Declaratory Order are true and accurate to the best of my knowledge, information and belief.

David Stauffer
David Stauffer

INTERESTS DESIGNATED TO CONTRAIL

from Penn Central Transp Co

LINE CODE	FROM STATION	TO STATION	RT1	RT2	BRANCH NAME	INTERESTS
123	LAMARSHIDE	LINCOLN	0.0	1.1	SUSQ (ASB) BRANCH	LINE TO CAC
124	VALLEY	WASHBURN	0.0	0.2	SCOTTSVILLE BR	LINE TO CAC
125	WASHBURN	WASHBURN	0.2	10.1	SCOTTSVILLE SEC	LINE TO CAC
126	ROBERTSON	READING	10.1	50.3	SCOTTSVILLE SEC	LINE TO CAC
127	WASHBURN	WASHBURN	50.3	60.4	SCOTTSVILLE SEC	LINE TO CAC
128	WASHBURN	WASHBURN	0.0	0.5	JEROME TRUCKS	LINE TO CAC
129	WASHBURN	WASHBURN	0.0	1.7	BELLHART BR	LINE TO CAC
130	WASHBURN	WASHBURN	0.0	0.3	BERRY TRUCKS	LINE TO CAC
131	WASHBURN	WASHBURN	1.3	2.5	100 PER DOWN TR	LINE TO CAC
132	WASHBURN	WASHBURN	0.3	2.4	BEST PHILA BLVD	LINE TO CAC
133	WASHBURN	WASHBURN	1.5	11.2	DELANEY EXT	LINE TO CAC
134	WASHBURN	WASHBURN	0.0	1.4	GIRARD PT. BRANCH	LINE TO CAC
135	WASHBURN	WASHBURN	0.0	2.9	COATESVILLE BR	LINE TO CAC
136	WASHBURN	WASHBURN	23.4	20.4	FRANK TRUCK	LINE TO CAC
137	WASHBURN	WASHBURN	0.0	0.6	WENCOYD BR	LINE TO CAC
138	WASHBURN	WASHBURN	0.0	0.0	PHOENIXVILLE BR	LINE TO CAC
139	WASHBURN	WASHBURN	9.2	10.0	PHOENIXVILLE BR	LINE TO CAC
140	WASHBURN	WASHBURN	0.0	1.0	BOYDSTOWN BR	LINE TO CAC
141	WASHBURN	WASHBURN	0.7	1.0	CORNY STREET BR	LINE TO CAC
142	WASHBURN	WASHBURN	0.0	0.3	CORNWICH STREET BR	LINE TO CAC
143	WASHBURN	WASHBURN	0.0	0.4	CORNWICH ST BR	LINE TO CAC
144	WASHBURN	WASHBURN	0.0	0.4	DELANEY AVE BRANCH	LINE TO CAC
145	WASHBURN	WASHBURN	0.0	1.2	SWAYSON ST BR	LINE TO CAC
146	WASHBURN	WASHBURN	105.5	109.9	WASH LINE	LINE TO CAC
147	WASHBURN	WASHBURN	109.9	113.3	WASH LINE	LINE TO CAC/TS TO OTHERS
148	WASHBURN	WASHBURN	90.4	93.4	WASH LINE	LINE TO CAC/TS TO OTHERS
149	WASHBURN	WASHBURN	270.0	204.1	WASH LINE	LINE TO CAC
150	WASHBURN	WASHBURN	204.1	204.4	WASH LINE	LINE TO CAC/TS TO OTHERS
151	WASHBURN	WASHBURN	204.4	207.5	WASH LINE	LINE TO CAC/TS TO OTHERS
152	WASHBURN	WASHBURN	1.1	33.7	SUSQ (ASB) BR	LINE TO CAC
153	WASHBURN	WASHBURN	33.7	45.4	SUSQ (ASB) BR	LINE TO CAC
154	WASHBURN	WASHBURN	45.4	50.6	YORK RIVER (ASB)	LINE TO CAC
155	WASHBURN	WASHBURN	60.4	68.5	COLUMBIA BR	LINE TO CAC
156	WASHBURN	WASHBURN	68.5	80.1	COLUMBIA BR	LINE TO CAC
157	WASHBURN	WASHBURN	80.1	90.8	SUSQ (COLUMBIA)	LINE TO CAC
158	WASHBURN	WASHBURN	90.8	100.0	COLUMBIA (PC/TS)	LINE TO CAC
159	WASHBURN	WASHBURN	0.0	1.0	DAN SEC TR	LINE TO CAC/TS TO OTHERS
160	WASHBURN	WASHBURN	1.0	10.2	DAN SEC TR	LINE TO CAC/TS TO OTHERS
161	WASHBURN	WASHBURN	10.2	35.7	DAN SEC TR	LINE TO CAC/TS TO OTHERS
162	WASHBURN	WASHBURN	35.7	59.7	BUTCH SEC	LINE TO CAC/TS TO OTHERS
163	WASHBURN	WASHBURN	59.7	60.5	BUTCH SEC	LINE TO CAC
164	WASHBURN	WASHBURN	60.5	62.9	BUTCH SEC	LINE TO CAC
165	WASHBURN	WASHBURN	0.0	1.5	CORNWICH VLY BR	LINE TO CAC
166	WASHBURN	WASHBURN	1.5	11.8	CORNWICH VLY BR	LINE TO CAC/TS TO OTHERS
167	WASHBURN	WASHBURN	11.8	10.3	CORNWICH VLY BR	LINE TO CAC/TS TO OTHERS
168	WASHBURN	WASHBURN	10.3	41.4	CORNWICH VLY BR	LINE TO CAC/TS TO OTHERS
169	WASHBURN	WASHBURN	41.4	68.2	CORNWICH VLY BR	LINE TO CAC/TS TO OTHERS
170	WASHBURN	WASHBURN	68.2	74.8	CORNWICH VLY BR	LINE TO CAC
171	WASHBURN	WASHBURN	74.8	21.6	NEW HOLLAND SEC	LINE TO CAC
172	WASHBURN	WASHBURN	21.6	20.0	NEW HOLLAND SEC	LINE TO CAC
173	WASHBURN	WASHBURN	20.0	40.0	NEW HOLLAND SEC	LINE TO CAC
174	WASHBURN	WASHBURN	40.0	41.0	NEW HOLLAND SEC	LINE TO CAC
175	WASHBURN	WASHBURN	0.0	1.8	QUANTICO VLY BR	LINE TO CAC
176	WASHBURN	WASHBURN	13.3	15.7	QUANTICO VLY BR	LINE TO CAC
177	WASHBURN	WASHBURN	0.0	1.0	LEBANON SEC	LINE TO CAC
178	WASHBURN	WASHBURN	20.2	21.7	LEBANON SEC	LINE TO CAC
179	WASHBURN	WASHBURN	0.0	0.2	YORK BRANCH	LINE TO CAC
180	WASHBURN	WASHBURN	7.0	7.2	YORK BRANCH	LINE TO CAC
181	WASHBURN	WASHBURN	7.2	12.8	YORK BRANCH	LINE TO CAC
182	WASHBURN	WASHBURN	43.0	40.7	SELINGSBOROUGH SEC	LINE TO CAC
183	WASHBURN	WASHBURN	0.0	1.4	MONTAIGNE SEC	LINE TO CAC
184	WASHBURN	WASHBURN	1.4	11.4	MONTAIGNE SEC	LINE TO CAC
185	WASHBURN	WASHBURN	0.0	3.0	RIVER LINE	LINE TO CAC
186	WASHBURN	WASHBURN	3.0	0.7	RIVER LINE	LINE TO CAC/TS TO OTHERS
187	WASHBURN	WASHBURN	0.0	5.9	RIVER LINE	LINE TO CAC
188	WASHBURN	WASHBURN	5.9	12.9	RIVER LINE	LINE TO CAC
189	WASHBURN	WASHBURN	12.9	14.8	RIVER LINE	LINE TO CAC
190	WASHBURN	WASHBURN	14.8	33.3	RIVER LINE	LINE TO CAC
191	WASHBURN	WASHBURN	33.3	87.0	RIVER LINE	LINE TO CAC
192	WASHBURN	WASHBURN	87.0	127.8	RIVER LINE	LINE TO CAC
193	WASHBURN	WASHBURN	127.8	132.5	RIVER LINE	LINE TO CAC
194	WASHBURN	WASHBURN	0.0	24.1	WALLKILL VALLEY	LINE TO CAC
195	WASHBURN	WASHBURN	24.1	33.0	WALLKILL VALLEY	LINE TO CAC
196	WASHBURN	WASHBURN	33.0	222.1	WASH LINE	LINE TO CAC
197	WASHBURN	WASHBURN	222.1	277.3	WASH LINE	LINE TO CAC
198	WASHBURN	WASHBURN	277.3	290.0	SAND HOLLOW EXT.	LINE TO CAC
199	WASHBURN	WASHBURN	290.0	290.4	WASH LINE	LINE TO CAC
200	WASHBURN	WASHBURN	0.0	52.5	BALD EAGLE TR	LINE TO CAC
201	WASHBURN	WASHBURN	0.5	5.7	REP SEC	LINE TO CAC
202	WASHBURN	WASHBURN	17.1	33.4	REP SEC	LINE TO CAC
203	WASHBURN	WASHBURN	33.4	39.9	REP BR	LINE TO CAC
204	WASHBURN	WASHBURN	39.9	48.7	NEW FORTAGE SEC	LINE TO CAC
205	WASHBURN	WASHBURN	48.7	43.1	BELLHART SEC	LINE TO CAC
206	WASHBURN	WASHBURN	0.0	3.9	MILBY BRANCH	LINE TO CAC
207	WASHBURN	WASHBURN	0.0	7.0	LEWISTOWN BR.	LINE TO CAC
208	WASHBURN	WASHBURN	7.0	8.0	MORRISON COVE SEC	LINE TO CAC
209	WASHBURN	WASHBURN	8.0	14.2	MORRISON COVE SEC	LINE TO CAC
210	WASHBURN	WASHBURN	14.2	21.5	MORRISON COVE SEC	LINE TO CAC
211	WASHBURN	WASHBURN	21.5	24.2	MORRISON COVE SEC	LINE TO CAC
212	WASHBURN	WASHBURN	24.2	45.8	BYDFORD SEC	LINE TO CAC
213	WASHBURN	WASHBURN	45.8	46.5	BYDFORD SEC	LINE TO CAC
214	WASHBURN	WASHBURN	46.5	51.0	BYDFORD SEC	LINE TO CAC
215	WASHBURN	WASHBURN	0.0	6.9	NY DALLAS SEC	LINE TO CAC
216	WASHBURN	WASHBURN	0.0	0.8	MARTINSBURG BR	LINE TO CAC
217	WASHBURN	WASHBURN	0.0	11.8	CRASSON SEC	LINE TO CAC
218	WASHBURN	WASHBURN	11.8	15.0	SUSQUEHANNA SEC	LINE TO CAC
219	WASHBURN	WASHBURN	15.0	43.3	BLACK LICK SEC	LINE TO CAC
220	WASHBURN	WASHBURN	0.0	0.3	BRIS BRANCH	LINE TO CAC
221	WASHBURN	WASHBURN	0.0	1.5	SOUTH FORK SEC	LINE TO CAC
222	WASHBURN	WASHBURN	0.0	10.6	SOUTH FORK SEC	LINE TO CAC
223	WASHBURN	WASHBURN	0.0	4.3	HARLE SEC.	LINE TO CAC
224	WASHBURN	WASHBURN	0.0	0.7	PAINT CR (CRP SEC)	LINE TO CAC
225	WASHBURN	WASHBURN	0.0	19.5	CENTRAL SEC	LINE TO CAC
226	WASHBURN	WASHBURN	0.0	2.0	SEAFER SEC.	LINE TO CAC
227	WASHBURN	WASHBURN	2.0	4.8	STAYNE SEC.	LINE TO CAC
228	WASHBURN	WASHBURN	0.0	1.5	WINDY BR	LINE TO CAC
229	WASHBURN	WASHBURN	0.0	1.5	ZUREKA BR	LINE TO CAC



2) 2000 100

2000 100

2000 100

INTERSTATE COMMERCE COMMISSION
CERTIFICATE AND DECISION

SERVICE DATE

JUL 15 1984

Docket No. AB-167 (Sub-No. 710N)

CONRAIL ABANDONMENT IN MONTGOMERY COUNTY, PA

Decided: July 13, 1984

On April 9, 1984, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973¹ to abandon a total of 2.9 miles of track of the Pottstown Branch from Parkerford, the lateral cut point of the prior abandonment in Docket AB-167 (Sub-No. 39) (approximately Milepost 35.0), to Pottstown -- 1,000 feet east of the Occidental Switch (approximately Milepost 37.9) in Montgomery County, PA.

Under section 308(c) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

(1) This certificate and decision is effective upon service.

(2) If the authority granted by this certificate and decision is exercised, Conrail shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.

By the Commission, the Review Board, Members Carleton, Parker and Howell.

SEAL

James H. Bayne
Secretary

until
1984 and then
on 23 1987

EXHIBIT
C

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

KIR

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1. REPORT DATE: January 19, 1993

2. BUREAU AGENDA NO. FEB-93-SC-RS-55*

3. BUREAU: Safety and Compliance

4. SECTION: Rail Safety

5. PUBLIC MEETING DATE: February 4, 1993

6. APPROVED BY: *WV*
Director: Nicely 3-3846
Supervisor: Bart 7-9732 *AW*

7. PERSON IN CHARGE: *JS*
Stallsmith 7-5936

8. DOCKET NO.: A-00110368

9. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

DOC 11
FEB 24

(a) Application of Consolidated Rail Corporation for the abolition of five crossings at-grade and below grade where its Pottstown Branch is intersected by public highways and streets in East Coventry Township, Chester County.

(b) Application Filed July 31, 1992. Field conference held September 16, 1992. There are no objections to the abolition of the five crossings involved, and all parties agree to the division of work and allocation of costs and maintenance responsibilities.

(c) The Bureau of Safety and Compliance recommends that the Commission adopt an order approving the abolition of the subject crossings.

**DOCUMENT
FOLDER**

10. MOTION BY: Commissioner Chm. Rolka Commissioner Holland - Yes
 SECONDED: Commissioner Rhodes Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

February 10, 1993

IN REPLY PLEASE
REFER TO OUR FILE

A-00110368

CHARLES E. MEHEM, ESQUIRE
LAW DEPARTMENT
CONSOLIDATED RAIL CORPORATION
TWO COMMERCE SQUARE
2601 MARKET STREET
PO BOX 41416
PHILADELPHIA PA 19101-1416

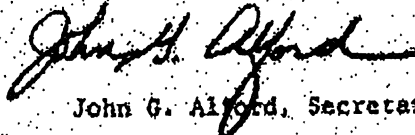
Application of Consolidated Rail Corporation for the abolition
of five crossings at-grade and below grade where its Pottstown
Branch is intersected by public highways and streets in East Coventry
Township, Chester County.

To Whom It May Concern:

This is to advise you that an Order has been adopted by the
Commission in Public Meeting on February 4, 1993 in the above entitled
proceeding.

A copy of this Order has been enclosed for your records.

Very truly yours,



John G. Alford, Secretary

DOCUMENT
FOLDER

mk
Encs.
Cext, Mail

DOCKETED

MAR 18 1993

DOCUMENT FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 4, 1993

Commissioners Present:

David W. Balka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner

Application of Consolidated Rail Corporation
for the abolition of five crossings at-grade
and below grade where its Pottstown Branch is
intersected by public highways and streets in
East Coventry Township, Chester County.

A-00110368

DOCKETED

MAR 18 1993

ORDER

BY THE COMMISSION:

This matter is before us by reason of an application filed July 31, 1992 by Consolidated Rail Corporation (Conrail) seeking Commission approval to abolish five rail-highway crossings, at-grade and below grade, at locations in East Coventry Township, Chester County.

A list of the crossings and their location follows:

<u>Crossing No.</u>	<u>Highway</u>	<u>Crossing Type</u>	<u>AAR No.</u>
1	Linfield Rd. (S.R. 1035)	below grade	531 736 F
2	Walla Rd. (T-489)	at-grade	531 776 D
3	Anderson Rd. (T-351)	at-grade	531 775 W
4	Frick's Locks Rd. (T-515)	at-grade	531 771 U
5	Sanatoga Rd. (T-590)	at-grade	531 770 M

In its application, Conrail proposes to remove the rail facilities and restore the roadway paving at the four at-grade crossings. At the below grade crossing, Conrail proposes to remove the rail facilities but to leave the bridge structure intact. Conrail agrees to bear the expenses associated with the abolitions as proposed.

The Interstate Commerce Commission, at Docket No. AB-167 (Sub. No. 110), approved the abandonment of the Pottstown Branch involved in this proceeding.] *

A field conference was arranged by a Commission staff engineer and held at the site of the crossings on September 16, 1992. All parties of record were notified of the conference and representatives of Pennsylvania Department of Transportation (PennDOT), Consolidated Rail Corporation, East Coventry Township (Township), Philadelphia Electric Company and Bell Telephone Company (Bell) were in attendance. Chester County was notified of the time and place of the conference but did not attend.

The Pennsylvania Department of Environmental Resources informed the Commission by letter that it would not participate in the subject field conference.

At the field conference, Conrail's proposal to leave the existing railroad bridge in place at Crossing No. 1 was not acceptable to PennDOT. PennDOT requested that Conrail remove the span over the roadway, the western pier and the adjoining western span of the subject structure. PennDOT agreed to maintain the highway at the subject crossing.

Following the field conference, Conrail informed the Commission, by telephone, that it would remove portions of the existing bridge at Crossing No. 1 as requested by PennDOT. In addition, Conrail agreed to install chain link fence at the remaining western abutment and on the eastern approach of the remaining bridge structure to prevent access to the bridge.

At the field conference, Conrail proposed to remove all rails and other railroad facilities and appurtenances of the at-grade Crossings Nos. 2, 3, 4 and 5, and to restore the roadway paving to two feet beyond the outside rails. Following completion of Conrail's work, the Township agrees to maintain the roadway at the subject crossings and to remove the advance railroad-highway crossing warning signs at Crossing Nos. 2 and 3.] *

Conrail's proposed work at Crossing Nos. 2 and 3 was not acceptable to the Township. The Township requested that Conrail reprofile the road at the two crossings.

After the field conference, Conrail agreed to remove all rails and other railroad facilities and appurtenances and to adjust the roadway profile to the satisfaction of the Township at Crossings Nos. 2 and 3. Also, Conrail agreed to place an eight-inch ballast material for the roadway subbase. The Township agreed to place material to choke the ballast and to pave the roadway with bituminous material at Crossing No. 2 and to provide the surface course for Crossing No. 3.

At the field conference, a sidetrack crossing was observed west of Crossing No. 4. Conrail agreed to remove the sidetrack crossing and crossbuck sign post and to restore the paving.

It does not appear that the facilities of any non-carrier public utility will be affected by the removal of the subject crossings. Rail has facilities along the pier of Crossing No. 1, but it determined that it should not be affected by the proposed work.

Upon full consideration of the matters involved, and as a result of general agreement between all parties, we find that a hearing is unnecessary and that an order may be issued approving the instant application.

The record having been certified to this Commission, we issue this order pursuant to Section 335(a) of the Public Utility Code, 56 Pa. C.S. §335, and find that the abolition of the crossings is necessary and proper for the service, accommodation, convenience or safety of the public; THEREFORE,

IT IS ORDERED:

1. That the application of Consolidated Rail Corporation be and is hereby approved to the extent herein ordered.
2. That upon completion of all work herein ordered, Crossing Nos. 1, 2, 3, 4 and 5, as shown on the list contained herein and located in East Coventry Township, Chester County, be and are hereby abolished.
3. That Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary at Crossing No. 1 to abolish the said crossing by the removal of the two western spans and the pier between the spans. The subject pier shall be removed to one foot below ground level and the slopes shall be graded at a 2:1 slope, and the area disturbed shall be seeded and mulched to prevent soil erosion, all in a safe and satisfactory manner. Also, a chain link fence shall be installed on the remaining western abutment and on the eastern approach of the existing bridge structure to prevent access to the bridge structure.
4. That Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary to abolish Crossing Nos. 2 and 3 by removing the rails, ties and other track materials and improving the longitudinal profile of the roadway in the vicinity of each crossing to the satisfaction of East Coventry Township, including placement of an 8 inch layer of ballast material subbase on the disturbed area.
5. That East Coventry Township, at its sole cost and expense, furnish all material and do all work necessary at Crossing Nos. 2 and 3 to restore the area of the highway disturbed by the track removal and profile adjustment with bituminous concrete or other suitable material conforming to the abutting highway paving.
6. That Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary to abolish Crossing Nos. 4 and 5 by removing the rails, ties and other track materials, including the siding track of Crossing No. 4, and restoring the area of the highway disturbed

by the track removal with bituminous concrete or other suitable material conforming to the abutting highway paving, in compliance with construction criteria of East Coventry Township. Limits of work shall be 2 feet beyond each outside rail.

7. That Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary to remove the standardized crossbucks, warning signals and signal boxes, if any, that are no longer necessary at the subject crossings. Each pedestal and/or foundation presently supporting the warning signals, signal boxes and/or crossbucks is to be removed to a point at least six (6) inches below the existing ground or pavement surface.

8. That East Coventry Township, at its sole cost and expense, furnish all material and do all work necessary to remove the advance railroad-highway crossing warning signs, if any, that are no longer necessary on the approaches of its highways involved in this proceeding.

9. That Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain any detours or traffic controls at the subject crossings that may be required to properly and safely accommodate highway and pedestrian traffic during the time the crossings are being abolished. Maintenance of traffic shall be in compliance with all requirements of Pennsylvania Department of Transportation and/or East Coventry Township having jurisdiction over the respective crossings.

10. That Consolidated Rail Corporation notify all parties of record, by letter, at least two weeks prior to performing any work in accordance with this order.

11. That all parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular and pedestrian traffic will not be endangered or unnecessarily inconvenienced and so that the requirements of each of the parties will be provided for and accommodated insofar as possible.

12. That any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any public utility, other than Consolidated Rail Corporation, which may be required as incidental to the execution of the abolitions of the subject crossings be made by said public utility at the sole cost and expense of Consolidated Rail Corporation, and in such a manner as will not interfere with the abolition of the crossings; and such relocated or altered facilities thereafter be maintained by said public utility.

13. That all work necessary to complete the abolition of the subject crossings be done in a manner satisfactory to this Commission on or before June 30, 1994, and that on or before said date Consolidated Rail Corporation and East Coventry Township each report to this Commission the date of actual completion of its respective portion of the work.



14. That Consolidated Rail Corporation pay all compensation for damage, if any, due to owners of property taken, injured or destroyed by reason of the abolition of the crossings, in accordance with this order.

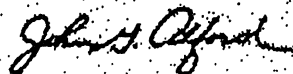
15. That upon completion of the abolition of Crossing No. 1, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway formerly passing under the railroad facility and the highway approaches thereto, in a safe and satisfactory condition.

16. That upon completion of the abolition of Crossing No. 1, Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the remaining portion of the existing bridge structure, the chain link fence installed in accordance with numbered Paragraph 3 herein and any other railroad facilities at the former crossing.

17. That upon completion of the abolition of Crossing Nos. 2, 3, 4 and 5, East Coventry Township, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway formerly occupied by the railroad facility and the highway approaches thereto, in a safe and satisfactory condition.

18. That this order is without prejudice to the right of any party to recover part or all of any costs incurred by said party in compliance with the provisions of this order, in accordance with any lawful agreement between it and any other party.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: February 4, 1993

ORDER ENTERED: FEB 10 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of March, 2018 served a copy of the Petition for Declaratory Order upon the following by first class United States Mail, postage prepaid:

David Stauffer
Chester Department of Facilities & Parks
313 West Market Street, Ste. 5402
West Chester, PA 19380-0991

Solomon Jackson
Director of Real Estate
Norfolk Southern Corporation
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Richard R. Wilson, Esq.