

212738

NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE
NORFOLK, VA 23510-2191



James R. Paschall
General Attorney

Direct Dial Number:
(757) 629-2759
fax (757) 533-4872

via DHL Express

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

ENTERED
Office of Proceedings December 10, 2004
DEC 13 2004
Part of
Public Record

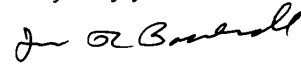
Re: STB Docket No. AB-167 (Sub-No. 1095X), Consolidated Rail Corporation -
Abandonment Exemption - In Lancaster and Chester Counties, PA

Dear Mr. Williams:

Enclosed please find an original and ten copies of the reply of Norfolk Southern Railway Company, successor to Pennsylvania Lines LLC and to Consolidated Rail Corporation, to the motion filed by Lancaster County on November 22, 2004 in the subject proceeding. Three disks containing the reply are also enclosed.

Please acknowledge receipt of this filing by returning the enclosed additional copy of this letter to me date stamped in the enclosed stamped, self-addressed envelope.

Very truly yours,


James R. Paschall

Operating Subsidiary: Norfolk Southern Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Docket No. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION
- ABANDONMENT EXEMPTION -
IN LANCASTER AND CHESTER COUNTIES, PA

REPLY OF NORFOLK SOUTHERN RAILWAY COMPANY,
SUCCESSOR TO PENNSYLVANIA LINES LLC,
AND TO CONSOLIDATED RAIL CORPORATION,
TO THE MOTION OF LANCASTER COUNTY, PA
TO REMOVE HISTORIC PRESERVATION CONDITIONS
AND TO GRANT ABANDONMENT AUTHORITY
FILED NOVEMBER 22, 2004

ENTERED
Office of Proceedings

DEC 13 2004

Part of
Public Record

James R. Paschall
General Attorney
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
(757) 629-2759

Attorney for:
Norfolk Southern Railway Company,
Successor to
Pennsylvania Lines LLC and
to Consolidated Rail Corporation

December 10, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-167 (Sub-No. 1095X)

Consolidated Rail Corporation
- Abandonment Exemption -
In Lancaster and Chester Counties, PA

Reply of Norfolk Southern Railway Company,
Successor to Pennsylvania Lines LLC,
and to Consolidated Rail Corporation,
To the Motion of Lancaster County, PA
To Remove Historic Preservation Conditions
and To Grant Abandonment Authority
Filed November 22, 2004

This is Norfolk Southern Railway Company's ("NSR") reply to the Motion of Lancaster County, PA ("County") to remove historic preservation conditions and to grant abandonment authority filed November 22, 2004 in the subject proceeding.

NSR's predecessor, Consolidated Rail Corporation ("Conrail") filed with the Board's predecessor agency, the Interstate Commerce Commission ("ICC"), a Notice of Exemption to abandon a 33.9-mile line of railroad, designated by Conrail as the "Enola Branch"¹ between Milepost 0.0 at Parkesburg, PA ("CP Park") and Milepost 33.9 at

¹This designation caused some confusion earlier in this proceeding because the branch was originally known as the Atglen and Susquehanna Branch of the

Port, PA ("CP Port")(the "Line") on October 3, 1989.² Although there may have been some ambiguity on this point, it seems both apparent from Conrail's description of the Line and clear from its actions that Conrail intended to abandon only one of two tracks on certain segments of the right-of-way near the end points of the Line. Thus, Conrail did not intend to cease using the entire 33.9 miles of the Line upon its abandonment,

Pennsylvania Railroad Company. However, Enola, PA and Enola Yard are not part of or near the subject Line, nor was the railroad at those locations constructed at the same time as the Atglen and Susquehanna Branch. The terminus of the subject Line nearer to Enola at the time of its construction was at Wago Junction, PA, nearly 20 miles from Enola. In turn, Wago Junction, PA is 16 miles further along NSR's active railroad line from the end point of the Line segment to be abandoned at Port, PA. NSR attempted to eliminate potential confusion about the subject Line's location and history by using and explaining the Line's original Pennsylvania Railroad name in our December 9 and 30, 2002 comments and reply comments. This did not seem to achieve the desired clarification and itself may have been confusing. Therefore, in later comments or references, NSR has returned to the use of the Enola Branch name used by Conrail, but with the explanation about the Line's exact location with respect to Enola.

²The subject Line is only 33.9 miles long but Conrail's description of the abandonment in the Notice of Exemption as including 66.5 miles of track caused some confusion about the length of the Line at earlier times during this proceedings. We think this has now been clarified. Most of the Line had double track on the right-of-way. While 33.9 miles of track number 2 on the Line were included in Conrail's Notice of Exemption to abandon the Line, only 32.6 miles of the parallel track number 1 were included. Conrail's intention to retain small track segments at both ends of the Line for industrial track, spur, storage or house tracks or other railroad purposes seems apparent.

NSR thinks it is important to provide a full description of the Line and the current context to note that Conrail sold approximately 2.5 miles of the Line between approximately Milepost 1.5 near Lenover, PA and Milepost 4.0 at about the Chester County/Lancaster County line to the Southeastern Pennsylvania Transportation Authority (SEPTA) by deed dated May 13, 1996. It seems clear by this action that at that time Conrail believed it could consummate abandonment of the Line, subject to the documentation of five bridges for historic preservation purposes. None of those bridges were on the segment sold to SEPTA. As noted in the text, NSR also will retain short lengths of the right-of-way at each end of the Line for industrial lead, spur, storage or house (excepted) track purposes or other railroad uses. We discussed the clarification of this description at slightly greater length in earlier comments.

but to continue to use at least short segments at both end points of the Line for excepted track purposes. Conrail may have intended that these short track segments would be reclassified as industrial lead, spur, storage or house tracks or that they simply would remain a line of railroad to the extent one of the tracks on the right-of-way was retained. Whatever Conrail's original intentions may have been, as this proceeding as developed, they do not preclude and should not prevent NSR from abandoning the entire Line while retaining short segments of the Line that NSR determines should be used for excepted track or other railroad purposes. We think the prior ICC and STB decisions and notices in this proceeding, other agency precedent, Conrail's actions with respect to the tracks and NSR's actions and intentions as the current owner of the property are consistent with this action.

NSR wishes to point out in order to prevent any prior Conrail or NSR statement about consummation of abandonment of the Line from being misinterpreted, that any such statement must be taken as including the reclassification, retention and NSR's continued use of short segments at the ends of the Line. While the formal abandonment of the entire 33.9-mile Line might appropriately be finalized or recognized at the conclusion of this proceeding, the consummation of the abandonment is or will be subject to that reclassification of the short track segments at each end point as industrial lead, spur, storage or house track. NSR continues to use these short segments of the Line as excepted track. Customers are still being served via the Parkesburg Industrial Track. NSR also owns the Line's right-of-way in fee, and could retain some additional short segments of the property at these end point locations for railroad purposes in addition to the short segments that are reclassified without formally

reclassifying those additional segments. NSR may retain but not reclassify some additional small segment of the Line at the Port, PA end of the Line if the County acquires the segment of the Line between approximately Milepost 27.0 and Milepost 33.7.

NSR does not oppose the relief requested in the County's motion, provided that one of three alternative dispositions is made with respect to NSR's duties in the recently executed and outstanding Memorandum of Agreement ("MOA") in this proceeding. That MOA was adopted by the Board and executed by the Board and other parties in order to mitigate the adverse effects of the abandonment of the Line on historic properties and to conclude the historic preservation process in this case. We also believe that the County should agree to assume, or indemnify NSR for, any increased costs that NSR might incur due to current or future Pennsylvania Public Utilities Commission ("PUC") orders that are affected by or result from the transfer of the MOA duties to the County, or that prevent or condition that transfer in whole or in part with the result that NSR would incur additional costs.³ Even though the PUC might not be a

³Under the February 25, 1997 Stipulation of Settlement ("Settlement Agreement") between Conrail and the Lancaster County PA Townships of Conestoga, Martic, Providence, Eden, Bart and Sadsbury and the Chester County Pennsylvania Township of West Sadsbury attached to NSR's December 2, 2003 comments, Conrail agreed to convey the real property comprising the Line that was located in each Township, except for certain property in Conestoga Township beyond Milepost 27.0 and the property in West Sadsbury Township, to the respective Townships. No property was to be conveyed to West Sadsbury Township, but Conrail agreed to pay West Sadsbury Township, jointly with Sadsbury Township, \$60,000 in consideration of the future maintenance by the Townships of the bridge at Noble Road on the Township boundary line. Conrail also agreed to convey the real property comprising the Line in the Borough of Quarryville, PA, which did not participate in the Settlement Agreement, to Providence Township.

The Settlement Agreement stated that Conrail's title to the property to be

formal party to the MOA, the PUC might need to approve the substitution of the County for NSR with respect to certain requirements or undertakings that are the subject both

conveyed was burdened by the previous conveyance of an easement to Amtrak. That easement was for the purpose of locating and maintaining Amtrak's electric power transmission line on the Line between Safe Harbor, PA (at approximately Milepost 28.3) and Parkesburg, PA (Milepost 0.0). Under the Settlement Agreement, Conrail also would retain an easement to perform any necessary work in connection with maintenance of the power line. The Townships consideration to Conrail was simply to relieve it of the future ownership and maintenance of the property.

In consideration of future maintenance of various specified bridges on the Line or other undertakings described in the Settlement Agreement, Conrail agreed to pay various specified amounts of money to the Townships.

The Settlement Agreement stated that two environmental assessments of the property were performed at Conrail's expense and were taken into account in arriving at the amount of consideration recited in the agreement.

Conrail also agreed to install fencing on the Noble Road Bridge, to remove the structures over White Oak Road, Pumping Station Road, U.S. Route 222 after two years, to pay up to \$185,000 of the cost of removal of bridges at Oak Bottom Road, Hollow Road (West) and Sigman Road, and to remove the Amtrak transmission towers from the Martic Forge Bridge within 18 months and assure existing barriers to access the bridge deck are in good operating order and to provide the Township with keys to the structures within 120 days of the effective date of the Agreement.

Conrail also entered into a Stipulation of Settlement with PennDOT, also attached to NSR's December 2003 comments, in which that agency consented to demolition of the structures which Conrail and the Townships agreed to demolish and agreed to maintain certain other specified structures that would be retained on the Line.

The Pennsylvania PUC approved the Stipulations of Settlement in its order entered October 9, 1997 in A-00111016, *Application of Consolidated Rail Corporation for the abolition of 31 Crossings of the Enola Branch, LC: 201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County* and C-00913256, *Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation, and Lancaster County, et al.* Pertinent pages from the lengthy decision and order were attached to NSR's December 2003 comments. The PUC order was eventually affirmed on appeal to the Supreme Court of Pennsylvania in a brief order without opinion in No. 0782, M.D. Allocatur Docket 1998, *Friends of the Atglen-Susquehanna Trail, Inc. and Historic Preservation Trust of Lancaster County v. Pennsylvania Public Utility Commission*, June 29, 1999, which was also attached as an exhibit to NSR's December 2003 comments.

The Line passes into Manor Township between approximately Milepost 33.1 and Milepost 33.9 at the end of the subject Line at Port, PA. This segment is parallel to the Port Road Branch and part or all of it will be retained by NSR. Manor Township is not a party to the Settlement Agreement with the other Townships.

of its orders and a term of the MOA. The PUC might approve the substitution, to the extent of its jurisdiction over the subject matter, only in part or might impose some additional condition or costs on NSR as part of its decision and order. Without assurance from the County that NSR will not suffer such additional costs if the Board grants the County's motion, such Board action could result in ambiguity about the potential extent of any continuing NSR duties, and other prejudice and unexpected costs to NSR. We believe neither the Board nor the County would intend that result nor that the Board's order should allow that possibility or be served before the possibility is eliminated by agreement.⁴

The first of the three options for more definite disposition of the MOA duties would be for the County, the Board, the Pennsylvania State Historic Preservation Officer ("SHPO"), the Advisory Council for Historic Preservation ("ACHP") and NSR to execute a document formally assigning to the County all of NSR's duties and responsibilities under the MOA. Similarly, the second alternative would be for the parties other than NSR to enter into a new MOA that supersedes the existing MOA and states that NSR shall have no further duties or responsibilities under the historic

⁴NSR does not suggest that the County relieve it of or indemnify it for the costs and commitments made by Conrail in the Settlement Agreements, but only that the County assume or indemnify NSR for any additional costs that might result from the Board granting its motion and any consequent proceedings before and orders by the PUC. It may seem obvious but if NSR were to make the agreed upon payments to the County, it would be an additional cost for NSR also to be called upon to make the same payments to the County. Without trying to comprehensively define such costs here, we think any changed or increased costs for the actions or payments called for in the Settlement Agreements or any new conditions required by the PUC that would result from the County's action and the Board's grant of the County's motion also would be such additional costs.

preservation process related to the abandonment of the Line. The third alternative simply would be to rescind the historic preservation requirements altogether, as the County requests in the concluding paragraph of its motion. NSR does not believe that can be done, or at least that it should be done, unless the SHPO and the ACHP agree to that action in writing and NSR is definitely relieved by Board order of any further historic preservation requirements under the MOA or with respect to this proceeding. We believe a further agreement with or indemnity from the County to NSR is necessary under all three options. It would be especially important under the less definite third option which we think might be more subject to uncertainty, misinterpretation or challenge without further agreement and concurrence by the SHPO and ACHP. Of course, this is the option that is suggested in the County's motion, although we have no reason to know whether it is the only option the County would consider without withdrawing its motion.

Regardless of which approach is taken to assign the MOA duties and complete the historic preservation process in this case, or of the form of the further assurance from the County to NSR, the Board should conclude this proceeding with the issuance of a decision that clearly and unconditionally states that NSR's duties and responsibilities under the MOA and the historic preservation process under Section 106 of the National Historic Preservation Act have been satisfied and are terminated. Then the Board can state that the Section 106 historic preservation process in this proceeding is unconditionally terminated and that there are no regulatory or other legal barriers to the consummation of the abandonment exemption authority for the subject Line. A specific decision and explanation by the Board at the conclusion of this

proceeding would prevent uncertainty about the intent or effect of the Board's decision and foreclose any plausible arguments that might provide a basis to challenge the decision or the County's assumption of the MOA duties.

While we do not doubt the County's intent to sincerely offer to fulfill the historic preservation process requirements with respect to the Line, we are concerned that its pledge to do so might be subject to challenge as indefinite, especially if the SHPO and ACHP do not agree in writing that the County's proposal is sufficient. We are also concerned about the possible involvement of the PUC or the affect of its orders on overlapping subjects could result in unintended extra duties for or costs to NSR. A more formal assumption by the County of NSR's duties under the MOA or the adoption of one of the two other alternatives suggested above is required to lend certainty to any Board order and better to ensure that this proceeding finally can be concluded. NSR thinks that additional certainty concerning the County's undertaking should be a prerequisite for the Board to grant the County's request. Possible arguments about the need or availability of further proceedings or the validity of the Board's decision should be foreclosed as much as possible. Further assurances by the County to NSR also would support Board action that would not prejudice NSR, which we believe is also consistent with the adverse abandonment precedent cited by the County in support of its motion.

We do not think the absence of these options or provision for the further assurances from the County's proposal requires rejection of the County's motion, but the Board should not grant the County's motion until these matters are satisfactorily handled or finally act upon it prior to an impasse in such handling. Moreover, it is

appropriate under the circumstances, where the County has volunteered to take on an obligation and is not otherwise subject to the Board's jurisdiction, to permit the County to accept or reject the option deemed appropriate by the Board for disposition of the MOA duties and to make a mutually satisfactory further agreement with NSR providing it with the assurances requested. If a disposition of the MOA duties or further agreement with NSR cannot be reached to the County's satisfaction, the County should be able to withdraw its motion without prejudice.

The existence of the MOA makes less certain that the Board could order the relief requested by the County and end this proceeding than might be the case if there were no MOA. Unless the County first assumes the MOA duties with the concurrence of the SHPO and ACHP and becomes clearly obligated to complete any further historic preservation or related undertaking without cost to NSR, a Board order might more likely be subject to challenge. We think the County must accepted a more definitive option to be adopted by the Board for a more formal, complete and unconditional transfer of the MOA duties in order for the Board to grant the County's request. Moreover, NSR must be specifically relieved of those duties and any potential resulting costs. These matters should be handled prior to the Board's service of a decision granting the County's request that would result in the termination of Board jurisdiction over the subject Line, not as conditions that might not be enforceable thereafter. A Board decision that concludes the historic preservation process on this more certain basis will be more satisfactory and certain and less susceptible to challenge.

NSR has found no precedent in support of or against the Board's authority to remove historic preservation process conditions or to declare them satisfied in

further delay was the only harm to arise from a challenge in such a situation, that would be intolerable in this case. If further delay or successful challenge can be avoided through simple actions and at relatively modest expense to the County, which the County apparently is willing to undertake and incur, that should be done.

Presumably, the predicate for the Board's action in relinquishing jurisdiction in this matter and allowing further action in state proceedings that would no longer be subject to federal pre-emption would be that the conditions to consummation of the abandonment in the MOA imposed by the Board as mitigation for the presumed adverse effects of the abandonment on historic properties had been, are or would be satisfied or that they are no longer necessary. Unless one of the three alternatives suggested by NSR above for disposition of the MOA duties is adopted, and perhaps more likely one of the first two is adopted, it might be argued that this predicate had not been established. The conditions might be deemed satisfied, or even unnecessary, by some action or decision short of formal assignment to and assumption of the duties in the MOA by the County or some other agreement with the Board, the SHPO and/or the ACHP. Since such action or decision apparently could be devised, it would be better to foreclose possible arguments by doing so than to leave these matters more open for argument. Moreover, it would not be consistent with adverse abandonment precedent where the railroad suffers no real prejudice or additional cost if the Board grants the requested relief for NSR to be left open to such possibility due to lack of formal agreement with respect to any extra costs that could result from the likely further PUC proceeding, or even from the previous PUC orders, on the same subject matter.

NSR is uncertain whether the Board should, even if it can, grant the relief

abandonment proceedings because of the transfer of obligations in an MOA or the pledge by a responsible party to complete them. The County's request appears unique and there may be no precedent on point, so the lack of it is not definitive. On the other hand, this means that any Board decision on the motion as an issue of first impression must be adequately crafted and supported.

NSR knows of no legal reason for concluding the relief requested by the County is beyond the Board's jurisdiction, inconsistent with the law or regulations or otherwise should be denied. However, we repeat our belief that a clear transfer to the County or other complete and final disposition of the MOA duties that would remove NSR completely as a party to the MOA, and assurance by the County that NSR would not be required to assume duties or costs because of PUC action on the same subject matter, would foreclose reasonable challenge to the Board's order. The County's obligations should be clear and fixed, and NSR's relief from the historic preservation process duties and related costs should be clear, before the Board terminates this proceeding. No plausible argument that a Board decision would be invalid based on the ambiguous or conditional nature of the County's promise to assume NSR's duties under the MOA or that NSR must re-assume those duties or related duties or increased costs should remain available if it can be foreclosed.

Unless NSR is finally, completely and unconditionally relieved of the historic preservation process conditions and the duties under the MOA, and is assured it will not suffer increased costs through a PUC decision that relates to the same subject matter, we do not see how the Board can rescind the conditions or declare this proceeding concluded and permit NSR to exercise or consummate the abandonment. Even if

requested by the County without the concurrence of the SHPO and the ACHP in the assignment or revision of the MOA. The Board imposed the historic preservation conditions currently outstanding in this matter through an MOA signed by the Board, the ACHP, the SHPO and NSR. In the absence of actual completion of the studies provided for in the MOA, NSR is uncertain, even if it is within the Board's authority to do so, that the Board should grant the relief requested by the County without the concurrence of the SHPO and the ACHP in the assignment or revision of the MOA duties or some other written assent to the Board's proposed action.

The agencies could concur in a certain course of action, including that specifically requested by the County, through a written reply or other submission to the Board in response to the County's motion, but if they do not do so, the County or even the Board should seek out their written response or concurrence in a specific action that is noted in the Board's order. NSR believes the better choices would be either to substitute the County for NSR as the party responsible to fulfill the requirements of the MOA and assign those duties to the County or for the agencies to enter into a revised MOA with the County that would satisfy the historic preservation process and terminate NSR's responsibilities under it. Even if the Board, as the agency in charge of the matter, decided to order the relief requested by the County in the absence of concurrences by the other agencies and advance disposition of the MOA duties, and we doubt that in view of their execution of the MOA, NSR believes this would not be prudent in view of the unique nature of the County's request and the history of this proceeding. Uncertainty and potential challenges to a Board decision granting the requested relief should be precluded as much as possible in this matter. Regardless of

the approach, this needs to be handled before a Board order that would terminate its jurisdiction, not as a condition that may not be enforceable after the proceeding is dismissed.

Assuming that the other agencies will concur, or the Board can issue an order that would require it, NSR will agree to the substitution of the County for NSR as a party to the MOA as long as all NSR duties under the MOA are unconditionally, completely and finally transferred to the County and the County will agree with NSR to assume any costs, or indemnify NSR for those costs, associated with past or future PUC orders or approvals dealing with the subject matter. We assume the agency concurrences will be obtained, the MOA will be assigned to the County or a new agreement will be reached, the County will agree to protect NSR from additional costs and the historic preservation process in this proceeding can be concluded or rendered unnecessary without leaving any open question about whether the Board's jurisdiction was unconditionally terminated or whether NSR retained any residual obligations under the MOA depending on some further future event or occurrence or proceeding in another forum concerning part or all of the same subject matter.

With respect to the requirements for and timing of consummation of the abandonment, the Board's removal of the historic preservation process condition alone should be sufficient Board action to permit NSR to consummate the abandonment of the subject Line under Conrail's original Notice of Exemption. The previous decisions of the Board and the ICC in this docket and the law, regulations and decisions applicable to consummation of railroad line abandonments prior to the Board's revised regulation dealing with that action support this conclusion. This case was initiated

before the written letters of consummation were required by the Board's revised regulation and presumably this abandonment thus could be consummated by a clear expression of NSR's intent to abandon the Line, which has been clearly made and remains in effect.

Indeed, NSR has suggested previously that Conrail had already exercised the abandonment exemption authority for the subject Line. If that argument were accepted, in that event, no further action would be required for consummation of abandonment of the Line to occur. That is obviously unlikely on the current record, but even if Conrail had not previously consummated abandonment of the Line, NSR's statements and actions with respect to its intentions to abandon the Line could be construed as resulting in consummation of the abandonment and exercise of the exemption authority immediately upon the Board's issuance of a decision declaring that all conditions to consummation of the abandonment of the Line had been satisfied or were rescinded.

Nonetheless, for the same reasons that we cited for our position concerning formal written assignment of the MOA duties to the County or formal substitution of the County for NSR as the responsible party with respect to the MOA, the reduction of uncertainty and of potential for plausible challenges to the Board's action, NSR will promptly file a letter of consummation of the abandonment of the Line if the Board grants the County's requested relief as conditioned or amended in line with this reply, and the Board so directs NSR to file a letter of consummation. As discussed above and further detailed below, NSR will condition consummation of the abandonment upon the retention and reclassification of certain segments of the Line at the end points as excepted track for industrial, spur, storage or house track purposes.

Specifically, NSR will declare in any letter notifying the Board of consummation of the abandonment of the Line that NSR is retaining and reclassifying as excepted spur, industrial lead or storage track, a segment of the Line between Milepost 0.0 at Parkesburg, PA and a point no farther along the Line than Milepost 1.5 at Lenover, PA, all in Chester County, PA. That segment, perhaps only as far as approximately Milepost 1.1, in fact has been used for industrial lead track purposes to serve at least two shippers during the entire period of time since Conrail filed the notice of exemption to abandon the Line until NSR took over the operation on June 1, 1999. Conrail continued to use this track segment under the name of the "Parkesburg Industrial Track." NSR has continued use of the segment as industrial lead track under the same name since June 1, 1999.

In order to use a segment of track at the other end of the Line for switching, turning or storage of cars and equipment, and to protect the operation of its parallel Port Road Branch, NSR also will retain and reclassify as excepted spur, house or storage track some length of line on the segment at the other end of the Line near Milepost 33.9 at Port, PA. At a minimum NSR will retain and reclassify 0.2 mile of track, back to Milepost 33.7. This would coincide with Conrail's statement that it would retain one of the two tracks that were on this short track segment. We need to make a final evaluation whether this will be sufficient for NSR's purposes. However, we think the maximum length of the track, or right-of-way, that NSR will retain is not likely to exceed about one mile. NSR's active Port Road Branch and the subject former Enola Branch intersect at a bridge at about Milepost 33.1, which may influence the decision.

On the other hand, since NSR's research (Conrail's former research, mostly)

showed Conrail owned, and thus NSR owns, the Line's right-of-way in fee, NSR has flexibility to retain some additional segment of the Line even if it is not reclassified. NSR will make a final determination of the location and length of right-of-way before Milepost 33.7 that would be useful or prudent for NSR to retain for excepted track before committing to retain and reclassify only 0.2-mile at Port, PA for that purpose. NSR will complete the evaluation promptly if the Board issues an order granting the County's request, recognizing that in this case, given NSR's ownership of the right-of-way, that NSR can make a decision on reclassification that may not include the entire length of the Line's right-of-way that NSR will retain near Port, PA for railroad purposes.

The County's condemnation suit apparently only includes that portion of the Line between Milepost 4.03 and Milepost 27.0, although that is not clear on the face of its declaration of taking and we have not had an opportunity to clarify this. NSR understands that the County is in fact interested in acquiring any contiguous part of the Line between Milepost 27.0 and Milepost 33.7 that NSR does not need for or in support of its operations, whether or not that segment is included in the condemnation action. The segment of the Line between Milepost 27.0 and Milepost 33.7 is not subject to the Settlement Agreements between Conrail and the Lancaster County Townships or the Pennsylvania DOT to which NSR is successor. We believe it would not be inconsistent with those Agreements, or the County's position concerning the relief requested from the Board, if the County entered into an agreement with NSR for the acquisition of that segment. If the County or NSR thought that the agreement needed to include some conditions before it became effective, including references to the outcome of proceedings in one or more state forums, and the other party agreed to those

conditions, we know of no impediment to an agreement on that basis. Since we believe the County should enter into an agreement with NSR to assume any additional costs to NSR that might result from the Board's decision granting the County's motion and from any orders of the PUC, this could be done at the same time.

We are not prepared to take a position on whether any such agreement on the further acquisition might be required rather than permissible or desirable nor does it appear necessary for us to do so, but we do believe an agreement is required with respect to protection of NSR against additional costs. Regardless of the status of that segment of the Line that is not included in the Settlement Agreements or any agreements with respect to any portion of the Line, however, we believe the Board should not grant the County's request unless the County takes over entire responsibility for the duties in the MOA, or perhaps to put it more precisely, unless NSR is completely and unconditionally relieved from such duties and assumes any additional costs that might result from the County's inability to fully do so because of the past or future orders of the PUC. It would be difficult if not impossible for the MOA duties to be divided on any reasonable basis. More importantly, it would seem to undermine any argument that the Board's jurisdiction over this matter had been terminated if NSR's MOA duties have not been completely, finally and unconditionally transferred or rescinded by clear and final Board order or NSR is still susceptible to being ordered to assume costs or duties with respect to the same subject matter. Any other disposition of those duties under less certain terms would leave open arguments that could lead to further piecemeal handling and prejudice NSR if not other interested parties.

Subject to the definite and formal transfer of NSR's duties under the MOA to the

County or a disposition that unconditionally and completely relieves NSR of those duties, to the County's agreement to assume any related costs from PUC actions and to NSR's retention of segments at either end of the 33.9-mile line as industrial, spur, storage or house track for continued railroad use, NSR can think of no potential harm either to NSR or to any other interested party that would result from the Board granting the County's request. The County appears to be correct in asserting that a Board decision granting the relief requested by the County will permit issues raised by the County or other parties in the condemnation action, including issues with respect to the Settlement Agreements, to be resolved before the Pennsylvania PUC or the Pennsylvania state courts. These are the proper forums for resolution of these issues in this case.

We must add, however, that the ability to progress the state proceedings without federal pre-emption due to the Board's jurisdiction over the Line is all that the requested Board decision will permit. Such a Board decision will not deal with or affect the substantive result with respect to these other issues, which are outside the Board's jurisdiction. The Board decision will have no substantive effect on decisions of the PUC or Pennsylvania courts in proceedings related to the disposition of the Line after consummation of the abandonment. Conclusion of the Board proceeding and relinquishment of Board jurisdiction over the Line is merely a necessary prerequisite or condition for any such State proceedings on other, even if generally related, issues to move forward.

The Board eventually would issue a decision in this case that removed the historic preservation process condition or declared the condition was satisfied after the

decision on the County's motion.⁵ Thus, we do not believe it is necessary for NSR to comment on every statement by the County with which we either do not entirely agree or do not think is as certain as stated by the County. If those statements deal with an issue we perceive to be outside the Board's jurisdiction or unnecessary to the Board's decision on the substance of the County's motion, there is no need for us to analyze them in detail.

While there may be no case directly dealing with the issues presented by the County's motion, the County's citation of decisions in certain adverse abandonment cases to support its request appears to be logical. If the County could secure the termination of STB jurisdiction over the Line through the adverse abandonment process, it ought to be able to do so through the lesser but essentially similar relief requested, at least in this case where all the factors that would support a favorable adverse abandonment decision appear to be present.

The County's request, as amended with respect to the MOA duties and assumption of additional costs to NSR that might result from its assumption of those duties or an order of the PUC, will not prejudice the railroad or any other interested person. A request for an adverse abandonment decision can be granted only in

⁵For example, the County states with respect to a Board decision granting the relief that it requests: "It will also assure that the Enola Branch is acquired and preserved for recreational purposes...." We believe that whether or not that is the result of the proceedings in the state forums cannot be predicted with certainty under the circumstances of this case. We do not believe that a prediction of the result in the state proceedings, much less the assurance of such a result, is required to support a decision by the Board granting the County's request, as conditioned or modified as suggested herein. The County has provided other support for the relief requested in its motion. Also, the Board's decision only will permit the County to proceed with the state cases. It will not affect, much less determine, the substantive result in those cases.

MOA requirements were fulfilled in any event. The State actions then could proceed. The relief requested by the County, as modified in one of the ways mentioned above to insure that it is definite, final and unconditional and with a further agreement to protect NSR from unexpected costs, simply will make the completion of the historic preservation process and conclusion of this proceeding before the Board occur at an earlier date. Thus, whenever this proceeding before the Board ended, absent some agreement or concession by all interested parties that settled the current issues that remain outstanding but are outside the Board's jurisdiction, those issues still would need to be resolved by the PUC or the Pennsylvania courts. Nothing the Board says and no orders the Board may issue will affect, much less determine, the resolution of those further issues. Thus, no party would seem to be prejudiced if those issues are put before the State forums sooner rather than later.

NSR's lack of opposition to the County's motion, except for NSR's requests for some additional certainty with respect to the disposition of the MOA duties and further assurance against suffering additional costs if the PUC orders affect the transfer of those duties to the County, should not be construed as a concurrence in or an endorsement by NSR of every statement in the County's motion. We specifically do not concur in any statements that appear to be predictions or declarations concerning the substantive decisions the PUC or Pennsylvania state courts would reach in other cases on other issues related to the Line and its ultimate disposition. Some of those issues will not be dealt with by the Board at all and all are on matters not subject to the Board's jurisdiction, at least once this proceeding is terminated, as near as we can determine. Those issues will not be resolved in this proceeding and will not affect the Board's

unusual circumstances that usually, if not always, must include that lack of prejudice. The situation with respect to this Line includes: no traffic on the Line for at least 16 years, no track on almost the entire right-of-way for about 13 years, the successive railroad owners have clearly expressed their intentions to dispose of the property, and there appears to be no prejudice to a party with an interest in the matter by the Board's granting the request if transfer of the MOA duties is made more definite and NSR is protected from incurring additional costs. Thus, it appears that if the current case were not pending, the County could have brought a very persuasive adverse abandonment application concerning the Line to the Board under the current circumstances, except with respect to the segments of the right-of-way that NSR will retain to serve customers or for other railroad purposes.⁶ We believe that any such decision would not have required NSR to assume any duties or costs with respect to historic preservation, however. While it seems logical that County would be able to accomplish a similar result through the lesser action that it now proposes, we are not sure this would be true if the circumstances were different and think that any sweeping statements that suggest the decision could be based on a general principle arguably applicable to all seemingly similar cases should be avoided.

We think it prudent to emphasize that Board action that is requested by the

⁶The County is not interested in the segment between Milepost 0.0 at Parkesburg, PA and approximately Milepost 1.5 at Lenover, PA, in Chester County, PA in any event. Moreover, the record shows that Conrail sold the intervening segment between approximately Milepost 1.5 at Lenover and approximately Milepost 4.0 at the Lancaster County-Chester County boundary line to SEPTA and the Parkesburg-Lenover segment could not be connected to the right-of-way in Lancaster County without the SEPTA segment.

County only will permit the County to proceed with its eminent domain or related actions before the Pennsylvania courts and the PUC. The Board's order will not affect, much less dictate, the outcome of any such State proceedings. Therefore, NSR does not concur with any statement in the County's motion that may be interpreted to suggest that the Board's order and the conclusion of this proceeding will have any substantive effect or dictate the outcome in the State cases.

The County referred to NSR's preliminary objections to the County's Declaration of Taking but did not attach them as an exhibit. They are contained in a document that is quite lengthy because there are several long attachments. The substance is contained in only seven pages, which we attach as an exhibit. We believe the Board should have access to the actual document, rather than a description of it, if the Board finds it necessary to examine or refer to it. Submission of the attachments, however, which include past STB or ICC decisions and other documents that should be in the record in this case, appears to be unnecessary and adding them to this large docket would serve little purpose. Contrary to the County's assertion, however, NSR believes that the position taken in its preliminary objections before the Pennsylvania court in fact does have merit.⁷ Nonetheless, those objections that are based on the continuing

⁷We believe our view is correct that as long as this proceeding is pending before the Board, or the Board has any remaining jurisdiction over a Line of railroad, regardless of the reason or purpose of the continued STB proceeding, an impediment to the exercise or consummation of any abandonment authority or exemption with respect to the Line would exist and no State case could proceed. Thus, the Board's jurisdiction over the Line continues regardless of the reasons for the continuation of the case. As indicated, this pre-emption issue would be mooted by the grant of the requested relief, as conditioned by having the County first specifically and formally assume NSR's duties under the MOA in writing and assure that NSR will not suffer unexpected additional costs as a result.

existence of the Board's jurisdiction over the Line would be mooted by the Board's grant of the relief requested by the County. Thus, there appears to be no reason to explain our disagreement or to debate the substance of those objections in this proceeding before the Board.

It is fair to note that the result sought by the County's requested relief, if granted by the Board, appears to be consistent with the result suggested in the position taken in NSR's December 9 and 30, 2002 comments and reply comments in this matter. We suggested that Conrail had consummated the abandonment at an earlier date and this proceeding should be terminated. The basis for the result requested by the County may not be exactly the same as that stated previously by NSR for ending this proceeding, but the result would be the same.⁸ In the absence of apparent prejudice to NSR or to any other party if the relief is modified as suggested herein and in the absence of a legal theory or precedent that suggests a different result is required, NSR thinks the position taken in our previous comments is generally consistent with the relief requested from the Board by the County, as modified or conditioned as suggested in this reply.⁹ We explained this position at some length in previous comments and it

⁸In fact, a result where the County assumes responsibility for the historic preservation duties in the MOA with respect to property located in the County in some manner that is agreeable to all the agencies appears to be at least as favorable to the historic preservation interests as leaving those duties with NSR.

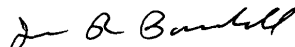
⁹In the absence of any apparent prejudice to any party, and in the absence of any apparent reason why the distinctions in the two similar positions of NSR previously and the County now, with the same requested result, should now lead to a different result, NSR can think of no good argument on which to base a position contrary to the result requested by the County, if conditioned or modified as suggested in this reply. In either case, the further issues would be matters to be considered in state forums.

would seem to serve no useful purpose to discuss this point or to detail the facts in support of it here. We might be able state the facts a little better or more concisely but since our previous position supports only the same result and not a decision on the County's motion and the essential information is in the record, that further statement is unnecessary.

In summary, NSR does not oppose Lancaster County's request to rescind the historic preservation conditions required by the MOA provided the relief is conditioned on, or the basis for the relief is modified to, definitely, completely, finally and unconditionally transfer the duties in the MOA to the County, with the concurrence of the SHPO and ACHP, or have the County and the Board and historic preservation agencies enter into a new MOA that accomplishes the same result or have the NSR MOA duties rescinded completely, finally and unconditionally with the concurrence of the SHPO and ACHP, terminate the historic preservation process in this matter and dismiss the proceeding. Any Board order granting the relief should be preceded by the more definite transfer of the MOA duties to the County and by an agreement of the County with NSR to assume all additional costs to NSR resulting from the Board's order and the effect of the orders of the PUC related to the same subject matter that would prevent or condition the transfer of the duties in whole or in part.

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY,
Successor to Pennsylvania Lines LLC and to
Consolidated Rail Corporation

By 
James R. Paschall, General Attorney

December 10, 2004

Ms. Susan Zacher
for Ms. Jean Cutler, Director
Pennsylvania Historical & Museum Commission
Bureau for Historic Preservation
400 North Street, 2nd Floor
Harrisburg, PA 17120-0093

The Honorable Arlen Specter
United States Senate
Harrisburg Regional Office
P. O. Box 1092
Harrisburg, PA 17108

The Honorable Joseph R. Pitts
Member of Congress
50 North Duke Street
Lancaster, PA 17602

Joyce A. Nettke
Friends of the Atglen-Susquehanna Trail, Inc.
P. O. Box 27
Strasburg, PA 17579

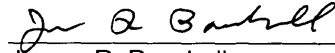
Mr. Richard G. Sprenkle, Deputy Secretary
Conservation and Engineering Services
Department of Conservation and Natural Resources
Commonwealth of Pennsylvania
Rachel Carson State Office Building
P. O. Box 8767
Harrisburg, PA 17105-8767

Mr. Ira Beckerman
Cultural Resources Section Chief
Environmental Quality Assurance Division
Bureau of Design
Pennsylvania Department of Transportation
P. O. Box 3790
Harrisburg, PA 17105-3790

Mr. Craig C. Eshelman
Chairman of the Board
Conestoga Township
P.O. Box 98
Conestoga, PA 17516

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2004, I served the foregoing document upon the parties on the following service list by first class mail, postage prepaid.


James R. Paschall

Service List

Mr. Richard R. Wilson
Attorney At Law
127 Lexington Avenue
Suite 100
Altoona, PA 16601

Mr. Scott Wyland
Hawke, McKeon, Sniscak & Kennard LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17105

Joseph A. Klein, Esq.
Joseph A. Klein, P.C.
500 North Third Street
7th Floor
Harrisburg, PA 17108

Benjamin C. Dunlap, Jr.
Naumann, Smith, Shissler & Hall
200 Third Street
P. O. Box 840
Harrisburg, PA 17108-0840

Mr. Don L. Klima, Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 809
Old Post Office Building
Washington, DC 20004

Mr. Frank H. Peiffer
Supervisor - Roadmaster
Martic Township
370 Steinman Farm Road
Pequea, PA 17565

Mr. Wayne S. Herr
Chairman of the Board
Providence Township
200 Mt. Airy Road
New Providence, PA 17560

Mr. Jay Groff
Supervisor - Treasurer
Eden Township
489 Stony Hill Road
Quarryville, PA 17566

Mr. Calvin D. Keene
Chairman of the Board
Bart Township
46 Quarry Road
Quarryville, PA 17566

Mr. N. Eugene Lammey
Chairman of the Board
Sadsbury Township
1077 White Oak Road
Christiana, PA 17509

John P. Mikowychok, Director
Department of Parks & Recreation
Chester County
601 Westtown Road, Suite 160
P. O. Box 2747
West Chester, PA 19380-0990

2. PRR is a subsidiary and successor in interest to Conrail. PRR is leased to and operated by NSR.

3. On October 3, 1989, Conrail filed a Notice of Exemption under 49 C.F.R. 1152, Subpart F - Exempt Abandonments to abandon 66.5 miles of track on its Enola Branch rail line in Lancaster and Chester Counties, which included track located on the condemned property, at Docket No. AB 167 (Sub-No. 1095X). A true and correct copy of the aforementioned Notice of Exemption is attached hereto as Exhibit "A."

4. By a Decision served February 22, 1990, the Interstate Commerce Commission ("ICC"), imposed an historic preservation condition that required Conrail to retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the Section 106 process of the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470f. The decision provided that if no interim trail use agreement was reached, Conrail was authorized to fully abandon the line. The period for negotiating trail use was subsequently extended to April 15, 1993. A true and correct copy of this Decision is attached hereto as Exhibit "B."

5. By decision served April 19, 1993, the ICC vacated the trail use condition with respect to the Enola Branch and stated that Conrail was permitted to abandon the line without reference to the previously imposed historic preservation condition. A true and correct copy of this Decision is attached hereto as Exhibit "C."

6. In a decision served October 2, 1997, the ICC's successor agency, the Surface Transportation Board ("STB"), denied a petition to reopen the proceeding to broaden the historic preservation condition to include the entire property as a "linear resource" but did modify the "stay" condition requiring Conrail not to alter the historic integrity of 32 bridges and 36 potential

EXHIBIT

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

IN RE:	:	No. CI-04-05422
	:	
CONDEMNATION BY THE COUNTY	:	
OF LANCASTER, LANCASTER COUNTY,	:	Proceedings in Rem and
PENNSYLVANIA, OF AN APPROXIMATE	:	Eminent Domain
930.2 ACRES OF LAND WITH	:	
IMPROVEMENTS THEREON SITUATED	:	
AT LANCASTER COUNTY, PENNSYLVANIA	:	
FOR THE PURPOSE OF USE AS PARK AND	:	
RECREATION LAND	:	
(Property of Pennsylvania Lines LLC)	:	
	:	

**PRELIMINARY OBJECTIONS OF PENNSYLVANIA LINES LLC,
CONDEMNEE, TO DECLARATION OF TAKING**

Pennsylvania Lines LLC ("PRR"), the Condemnee in the above-referenced matter, and Norfolk Southern Railway Company ("NSR"), which holds an equitable interest in the subject property, by and through their counsel, Nauman, Smith, Shissler & Hall, LLP, pursuant to Section 406 of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, *as amended*, 26 P.S. § 1-406, hereby preliminarily objects to the Declaration of Taking filed by the County of Lancaster ("County") on June 16, 2004, and served on PRR on July 13, 2004, as follows:

1. PRR is the titled owner of the property purported to be condemned in the Declaration of Taking pursuant to a Quitclaim Deed by and between Consolidated Rail Corporation ("Conrail") and PRR dated May 19, 1999, and recorded in the Office of the Recorder of Deeds for Lancaster County at Vol. 6403, page 0001, of which the condemned premises constitute a part.

11. Until the railroad has received and has exercised STB authority to abandon a line of railroad, the property is subject to the exclusive jurisdiction of the STB, including jurisdiction for the completion of any post-abandonment conditions. 49 U.S.C. §§ 10501 and 10903; *Hayfield Northern RR Co. v. Chicago & Western Trans. Co.*, 467 U.S. 622 (1984); *Friberg v. Kansas City S. R.Y.*, 267 F.3d. 439, 443 (5th Cir. 2001); *CSX Transportation, Inc. v. Georgia Public Service Commission*, 944 F.Supp. 1573, 1581 (N.D. Ga. 1996).

12. The County's condemnation authority over the line is thus preempted by federal law unless and until the STB abandonment process is completed and STB jurisdiction is terminated over the line. *Hayfield Northern RR Co.*, *supra*.

13. Furthermore, unless and until the STB abandonment process is completed and STB jurisdiction is terminated over the line, the County lacks authority to condemn the property under state law, as until that time the property remains a railroad right-of-way which the County cannot legally condemn without PRR's consent, which PRR has not given. 16 P.S. § 2402.

14. Thus, the County cannot proceed with condemnation while the property is still considered a line of railroad subject to the STB's jurisdiction.

15. Under the unusual facts of this case in which it has been suggested that Conrail may have exercised abandonment authority previously permitted by the ICC, this Court should refer the determination of whether abandonment authority for the subject rail line has been effected to the STB, which is the agency with plenary and exclusive jurisdiction of the subject matter. See *Ohio Department of Transportation—Petition for Declaratory Order—Status of Track at Findlay, Hancock County, OH*, STB Finance Docket No. 34415, 2004 STB Lexis 110 (served February 17, 2004); *City of Creede, Co.—Petition for Declaratory Order*, STB Finance Docket No. 34376.

archaeological sites near bridges that the Pennsylvania State Historic Preservation Officer (“SHPO”) had previously identified as possibly eligible for listing in the National Register. A true and correct copy of this Decision is attached hereto as Exhibit “D.”

7. In the Board’s decision served August 13, 1999, the Board denied a petition for reconsideration of the 1997 decision, imposed the mitigation conditions for adverse effects of the abandonment on historic resources that had been previously agreed upon between the STB, the SHPO and Conrail and terminated the Section 106 process. A true and correct copy of this Decision is attached hereto as Exhibit “E”. However, the U.S. Circuit Court of Appeals for the Third Circuit vacated the Order and remanded the case to the STB for the STB’s failure to comply fully with the procedural requirements of the NHPA. See *Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Board*, 252 F.3d. 246 (3d Cir. 2001).

8. By Notice served October 24, 2002, a true and correct copy of which is attached hereto as Exhibit “F”, the STB notified the parties to the proceeding that it was reinitiating the Section 106 historic review process pursuant to the Court’s remand. In that notice, the STB stated that its “decision to allow abandonment of rail service on the Enola Branch is unaffected by the Court’s remand.”

9. The Section 106 process has not been terminated to date and at least this phase of the abandonment proceeding remains pending before the STB.

10. The STB has broad and exclusive jurisdiction over railroad transportation, facilities and transactions, including the abandonment of railroad lines, which regulation is exclusive and preempts other remedies provided under federal or state law. 49 U.S.C. § 10501(b)(2).

16. Alternatively, the Court should stay this proceeding and direct the parties to seek a determination of the abandonment status of the property from the STB.

17. Furthermore, the description of the property purported to be taken is imprecise and could potentially be read to include an active portion of the Enola Branch rail line, for which Conrail is not seeking abandonment authority from the STB and which the County would have no authority to condemn under federal law or the County Code.

18. The 26 bridges and portions of condemned property crossing public highways are subject to the exclusive jurisdiction of the Pennsylvania Public Utility Commission ("PUC"), whose jurisdiction encompasses the abolition of any such crossings. 66 Pa.C.S. § 2702(a).

19. Conrail filed an application with the PUC on September 29, 1993, docketed to No. A-00111016, for approval to abolish the rail-highway crossings on its Enola Branch within the condemned property in Lancaster County. This proceeding was consolidated with a prior proceeding at Docket No. C-00913256 initiated on February 25, 1991, regarding the abolition of another public rail-highway crossing on the line.

20. Conrail entered into a Stipulation of Settlement with West Sadsbury Township, Sadsbury Township, Bart Township, Eden Township, Providence Township, Martic Township and Conestoga Township, dated February 25, 1997, and entered into a separate Stipulation of Settlement with the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT") dated February 21, 1997, regarding the disposition of the condemned property and maintenance responsibilities for the bridges at the public rail-highway crossings on the line. A true and correct copy of the Stipulation of Settlement between Conrail and the Townships is attached hereto as

Exhibit "G" and a true and correct copy of the Stipulation of Settlement between Conrail and PennDOT is attached hereto as Exhibit "H".

21. The Stipulation of Settlement between Conrail and the Townships provides for monetary payments to be made by Conrail to the Townships for their assumption of certain maintenance responsibilities for the bridges.

22. By Opinion and Order entered October 9, 1997 ("PUC Opinion and Order"), the PUC approved the aforementioned Stipulations of Settlement between Conrail and the Townships and Conrail and PennDOT. See PUC Opinion and Order at 44, paragraphs 9-10. A true and correct copy of the PUC Opinion and Order is attached hereto as Exhibit "I".

23. The PUC Opinion and Order requires Conrail to make payments to the Townships totaling \$1,315,000. See *Id.* at 44-45, paragraph 11.

24. The PUC Opinion and Order also requires the parties to perform various work projects at certain of the subject rail-highway crossings in order to protect the public safety.

25. Fulfillment of the terms of the Stipulations of Settlement and the parties' various obligations under the PUC Opinion and Order have been stayed pending the resolution of disputes over completion of the Section 106 process in the pending STB proceeding.

26. The Eminent Domain Code does not affect, vary, alter or modify the jurisdiction or power of the PUC. 26 P.S. § 1-303.

27. The PUC retains sole and exclusive jurisdiction over the 26 public rail-highway crossings which are the subject of its Opinion and Order.

28. While the liabilities under the PUC Opinion and Order may remain with Conrail, PRR is the successor to Conrail as the property owner and is the party to transfer the property after its

abandonment as a line of railroad and to assure Conrail's compliance with its payment or other obligations under the Stipulation of Settlement.

29. Condemnation of the 26 rail-highway crossings which are the subject of the PUC's Opinion and Order within the condemned property cannot be affected without first gaining approval of the PUC to modify its Opinion and Order in order to protect the public safety and not subject Conrail or PRR to potential additional, inconsistent or duplicative obligations.

WHEREFORE, Pennsylvania Lines LLC respectfully requests that this Honorable Court stay the County's condemnation proceeding unless and until such time as the Surface Transportation Board definitively determines that the subject property has been abandoned. In addition, Pennsylvania Lines LLC respectfully requests that this Court stay the County's condemnation proceeding until such time as an Order is obtained from the PUC with respect to its Opinion and Order served October 9, 1997, regarding the 26 public rail-highway crossings on the line in light of the County's intended condemnation.

Respectfully submitted,
NAUMAN, SMITH, SHISSLER & HALL, LLP

By *Benjamin C. Dunlap, Jr.*
Benjamin C. Dunlap, Jr., Esquire
Supreme Court ID# 66283
J. Stephen Feinour, Esquire
Supreme Court ID #24580

200 North Third Street, 18th Floor
P. O. Box 840
Harrisburg, PA 17108-0840
Phone: 717-236-3010
Fax: 717-234-1925

Attorneys for Pennsylvania Lines LLC, Condemnee,
and Norfolk Southern Railway Company

Date: July 15 2004