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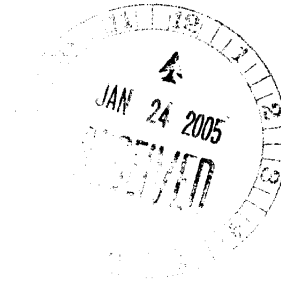
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January 18, 2005

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
Mercury Bldg., #711
1925 K Street, N.W.
Washington, D.C. 20423-0001



RE: Docket No. AB-167 (Sub No. 1095X); Consolidated Rail Corporation –
Abandonment Exemption- Lancaster and Chester Counties, PA

Dear Secretary Williams:

Enclosed for filing you will find the original and ten copies of Reply to New Matters by Lancaster County in the above captioned matter. Please time stamp the copy of this letter and return it to me in the enclosed self-addressed, stamped envelope provided for that purpose.

Copies of this Reply have been served on all parties of record.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.

RRW/bab
Enclosures

xc: Lancaster County
All Parties of Record

ENTERED
Office of Proceedings
JAN 24 2005
Part of
Public Record

213066

Before the
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. AB-167 (Sub No. 1095X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
LANCASTER AND CHESTER COUNTIES, PA

REPLY TO NEW MATTERS BY LANCASTER COUNTY, PENNSYLVANIA

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CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
LANCASTER AND CHESTER COUNTIES, PA

REPLY TO NEW MATTERS BY LANCASTER COUNTY, PENNSYLVANIA

On November 22, 2004, Lancaster County filed a Motion to Remove Historic Preservation Conditions and to grant abandonment authority in the above captioned proceeding. On December 10, 2004, Norfolk Southern Corporation (“NS”) and Conastoga, Martic, Providence, Bart, Eden and Sadsbury Township (“Townships”) filed replies to the motion of Lancaster County. Lancaster County requested an extension of time to address new matters raised by these parties and now makes this reply.

A. New Matters Raised by Norfolk Southern Corporation.

The NS reply raises three principle concerns regarding the motion filed by Lancaster County. The first is the desire of NS to continue to use certain segments of track on either end of the line for industrial switching, turning or storage of cars and equipment as identified on pages 17 and 18 of the Norfolk Southern Reply. Lancaster County has no objection to the retention and use by NS of these end track segments and, in fact, Lancaster County has not sought to condemn any property for recreational trail purposes beyond the section of the NS right of way from milepost 4.03 to milepost 27.0.

NS’s next concern pertains to its unwillingness to incur any increased or additional costs under current or future PaPUC orders that may result from the transfer of MOA historic preservation

duties to Lancaster County or from the subsequent acquisition of the NS line from milepost 4.03 to milepost 27.02 pursuant to the state condemnation proceeding. Lancaster County is prepared to assure NS that it will assume any increased or additional costs, beyond those already incurred by NS or to which NS is already committed, under any current or future PaPUC orders that result from the transfer of the MOA historic preservation duties to Lancaster County or result from the subsequent acquisition of those portions of the NS line from milepost 4.03 to milepost 27.02 pursuant to the state condemnation proceeding.

Finally, NS has proposed three alternative scenarios under which it could be unconditionally and finally released from any responsibility for continuing historic preservation conditions. The first possibility would be the assignment of all NS obligations and commitments under the present Memorandum of Understanding from NS to Lancaster County. The second alternative would be the execution of a new Memorandum of Understanding with respect to historic preservation conditions without NS being a party to such a new agreement. Finally, NS also concurs with Lancaster County's Motion which requests that the historic preservation requirements be rescinded provided that both SHPO and ACHP advise the Board that they agree to the rescission of those historic preservation requirements given the County's decision to acquire the NS line and preserve it for recreational trail purposes.

Lancaster County is willing to proceed with any of these options and has submitted the letter attached at Exhibit A to SHPO and ACHP requesting that these agencies advise the Board if they are agreeable to the rescission of the historic preservation conditions contained in the current MOA and or if they are willing to negotiate a new MOA without Norfolk Southern's participation. Lancaster County is also willing to accept assignment of NS responsibilities under the existing MOA but since that agreement was predicated upon the abandonment and subsequent conveyance of the railroad right of way to different municipal entities, without assurance of its preservation as a continuous

corridor, Lancaster County believes it would be preferable to develop historic preservation conditions which reflect the County's plans to preserve and restore this former railroad corridor as a recreational trail.

Lancaster County believes that the commitments contained in this Reply to New Matter address the concerns raised by NS and provide adequate assurances that NS (1) will be able to utilize various portions of its right of way for continued railroad purposes; (2) will not incur increased or additional costs under current or future PUC orders; and (3) can be unconditionally and finally released from any continuing historic preservation requirements related to this line.

B. Reply to New Matter Raised by Conastoga, Martic, Providence, Bart, Eden, and Sadsbury Townships.

Townships assert in their response that Lancaster County has no legally cognizable interest in the NS rail line to file its motion. However, Lancaster County has long been involved in proceedings with respect to the subject rail line. In the early 1990s, Lancaster County negotiated with Conrail to acquire the subject rail line under a Notice of Interim Trail Use. When the parties were unable to reach agreement, the County continued to monitor various developments and has now determined to acquire the line for recreational purposes under the provisions of state law. Thus, Lancaster County has been and continues to be an interested party with standing to seek the relief it has requested in this proceeding.

The County has filed a condemnation proceeding in the Common Pleas Court of Lancaster County and as a Third Class County it is not subject to Pennsylvania's Second Class County code. However, the citation to 16 P.S. §2402 in the Township's Reply (which is found in the County Code applicable to third class counties) does limit use of the power of eminent domain "without the consent of the company owning or operating or in possession of said railroad." However, a railroad is defined by 49 U.S.C. §10102(6)(b) as a "road used by a rail carrier or owned by it or operated

under an agreement ...” 49 U.S.C. §10102(5) defines a rail carrier as “a person providing common carrier railroad transportation for compensation.” Since NS (and Conrail before it) ceased providing common carrier service over the subject rail line for compensation, the limitations imposed by 16 P.S. §2402 no longer prevent Lancaster County from using its powers of eminent domain to acquire the subject right of way. The provisions of §2402 were apparently intended by the state legislature to prevent counties from interfering with the acquisition of right of way and the operation of common carrier railroads without the consent of those carriers and have now been superceded by the doctrine of federal preemption with respect to the acquisition and operation of common carrier rail facilities. However, the provisions of 16 P.S. §2402 impose no limitations on the condemnation powers of Lancaster County with respect to the property of NS which is no longer owned, operated or in the possession of NS for purposes of common carrier railroad operations.

Finally, the application of Section 2402 presents a question of state law which can be addressed, if necessary, by the Common Pleas Court, not the STB. Similarly, with respect to the Township’s assertions regarding compensation, those are matters to be resolved in the state court condemnation proceeding, not by the Board.

C. Implementation

It should be noted that the Townships are not signatory parties to the historical preservation MOA and they have characterized the Board’s historic preservation requirements as “unnecessary and meaningless documentation.” Given that characterization of federal law, it not surprising that the Board found it advisable to specify historic preservation requirements in the MOA before the line could be conveyed by NS to the Townships. In contrast, Lancaster County has indicated its willingness to address the Board’s historic preservation requirements in a flexible and cooperative fashion and requests that the Board utilize the good offices of its Section of Environmental Analysis to facilitate implementation of the various arrangements and/or modifications to the MOA proposed

by Lancaster County and NS in a fashion that will satisfy the ACHP and the SHPO. Lancaster County believes that a meeting between the MOA signatory parties and Lancaster County under the auspices of the SEA would promptly resolve any historic preservation issues. Similarly, Lancaster County is also willing to initiate immediate negotiations to address the other matters raised by NS. Upon notification by the respective parties of the resolution of these matters, the Board would then be in a position to issue a final abandonment order with the assurance that federal historic preservation requirements have been fully and adequately addressed.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:

A handwritten signature in dark ink, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson, Esq.
Attorney for Lancaster County

LANCASTER COUNTY

OFFICE OF THE COUNTY COMMISSIONERS

COUNTY COMMISSIONERS
HOWARD "PETE" SHAUB, Chairman
DICK SHELLENBERGER, Vice-Chairman
MOLLY S. HENDERSON

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DON ELLIOTT
Chief Administrative Officer

GARY D. HEINKE, Ph.D.
Chief Services Officer

January 18, 2005

Ms. Jean Cutler, Director
Pennsylvania Historic Museum Commission
Bureau of Historic Preservation
400 North Street, 2d Floor
Harrisburg, PA

Mr. Don Klima, Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 800
Old Post Office Building
Washington, DC 20004

ANDREA M. McCUE
Chief Clerk
JOHN W. ESCHENBACH
County Solicitor

Dear Ms. Cutler and Mr. Klima:

I am writing to you on behalf of Lancaster County regarding the motion which we recently filed with the Surface Transportation Board seeking the removal of historic preservation requirements imposed on Norfolk Southern in light of the decision by Lancaster County to condemn the Norfolk Southern right of way for preservation as a recreational trail. We have undertaken this action in order to eliminate a possible legal question regarding the continuing jurisdiction of the Surface Transportation Board which might be raised as an arguable basis for federal preemption of the state condemnation proceeding. Norfolk Southern has responded to this motion as indicated in the enclosed Reply to New Matter which we have filed with the Board by suggesting three alternative procedures by which it could be relieved from its historic preservation responsibilities. The first would involve the direct assignment of the current memorandum of agreement to Lancaster County and the assumption by Lancaster County of Norfolk Southern's responsibilities thereunder. The second would involve the negotiation of a modified memorandum of agreement between your agencies and Lancaster County to which Norfolk Southern would not be a party. Finally, with the consent of both of your agencies, we can ask the Board to withdraw its historic preservation requirements given the fact that Lancaster County will be acquiring and preserving the right of way for recreational trail use. Lancaster County is prepared to proceed with any of these alternatives.

In our Reply to New Matter, we have requested a meeting under the auspices of the STB's Section of Environmental Analysis to address these matters. Once you have had an opportunity to review the enclosed pleading, please have the appropriate member of your staff contact me so that we can discuss these issues in greater detail.

Very truly yours,

Dee Dee McGuire

Dee Dee McGuire, Project Manager
Lancaster County

xc: Richard R. Wilson, Esq.



LANCASTER COUNTY • ESTABLISHED 1729

EXHIBIT A

CERTIFICATE OF SERVICE

I, Richard R. Wilson, Esq., attorney for Lancaster County, hereby certifies that on the 18th day of January, 2005, he did serve a true and correct copy of the foregoing Reply to New Matters by Lancaster County, Pennsylvania upon the following counsel of record, by first class mail, postage prepaid, at their offices as set forth below:

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The Honorable Arlen Specter
United States Senate
Harrisburg Regional Office
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Norfolk, VA 23510-219

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Pennsylvania Historical & Museum
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Joyce A. Nettke
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Richard R. Wilson, Esq.