

SERVICE DATE – APRIL 9, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1020X

EAST PENN RAILROAD, LLC—ABANDONMENT EXEMPTION—IN BERKS AND
MONTGOMERY COUNTIES, PA

Decided: April 8, 2009

By decision served on November 18, 2008, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by East Penn Railroad, LLC (ESPN) of an 8.6-mile line of railroad extending from milepost 0.0 at Pottstown to milepost 8.6 at Boyertown, in Berks and Montgomery Counties, PA. This grant of authority was made subject to public use, trail use, environmental, and standard employee protective conditions. The exemption was scheduled to become effective on December 18, 2008, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by November 28, 2008.

Berks County (Berks) filed an OFA to purchase the line on November 26, 2008, and the Board found it financially responsible in a decision served on December 2, 2008. Berks then petitioned the Board on December 24, 2008, to set the terms and conditions of the line sale. The Board set the terms and conditions on January 28, 2009. Berks rejected the terms and conditions, and the Board terminated the OFA process and made the abandonment authority effective on February 13, 2009. Berks sought judicial review of the Board's decision setting terms and conditions, and Berks filed a petition with the Board asking that the Board stay its decision setting the terms and conditions pending judicial review.¹

On March 25, 2009, Berks submitted a filing notifying the Board that the parties had consummated the sale of the line on March 24, 2009, and seeking to withdraw its stay request.² The request to withdraw the stay petition is reasonable and will be granted.

¹ On March 19, 2009, Montgomery County, the party that had sought the trail use and public use conditions, filed a petition requesting their withdrawal and termination. The Board reopened the proceeding, allowed for the withdrawal of the trail use and public use condition requests, and terminated those conditions in a decision served on March 23, 2009.

² On April 2, 2009, Berks submitted a letter clarifying that it had acquired the subject line outside the offer of financial assistance process and pursuant to Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions, 363 I.C.C. 132 (1981), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). See 49 CFR 1150.21 et seq.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Berks' request to withdraw its stay petition is granted.
2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary