

E1-1427
CD



"Paschall, James, R."
<James.Paschall@nscorp.com>
03/18/2005 03:58 PM

To deanc@stb.dot.gov
cc martictwp@comcast.net, providence.township@comcast.net,
sandsbury-lanc@comcast.net, [REDACTED]@msn.com,
Vicki.Rutson@stb.dot.gov, ktheimer@achp.gov,
bcc

Subject RE: Enola Branch Final MOA [AB-167 (Sub-No. 1095X)]

Dear Ms. Dean:

My previous e-mail was not meant to imply that either NSR or the County contemplated transferring or assigning the MOA or the obligations therein without following proper procedures and obtaining the agreement of all the signatories. I apologize if the e-mail left Mr. Brady with that impression, but I must say I am surprised that it might have been interpreted that way.

Previous statements by both NSR and the County in the most recent filings with the Board acknowledged the steps that would be necessary to either change or transfer responsibility for the MOA. We expressed interest in the County's proposals with respect to the historic preservation requirements, but NSR stated specifically that all of the parties, and the SHPO in particular, must be satisfied with any changes to the MOA or with respect to the responsible party. I would not have thought that we would be viewed as not keeping this in mind or that further acknowledgement or restatement of this principle would need to be recited in an e-mail in response to an e-mail asking about the status of the matter. I realize that Mr. Brady is not a lawyer, however, and that perhaps my response left him with some concern.

Also, e-mail tends to be less formal and sometimes less detailed than other communications, and it is without personal contact, so neither the full message nor the intended tone may be adequately communicated - or that past communications or other information that the sender might have in mind might not be available or in mind of the recipient. I am currently devoting considerable time to negotiations with Amtrak and may have sent the prior e-mail too hastily in order to provide a quick response.

As I noted, the County's offer and their general involvement with the matter, the possibility of negotiating an agreement to transfer most of the right-of-way to the County, the State proceedings, and until recently the County's motion before the Board all have changed the circumstances or at least the time frame. NSR certainly was not only the party that pressed to have the MOA completed but to have time frames included in the MOA. However, I think it is fair in view of the long time during which this matter has been pending, and the unlikelihood that the report would be much different if it is done now or a few months from now, to explore these other possibilities with the County or to await resolution of pending issues if it would spare NSR the expense of the studies and place responsibility with the County, which presumably is among the parties with the greatest interest in preserving or documenting the local history. Moreover, the County might not take over the agreement, but might negotiate a new one or perhaps even pay for completion of the current studies in consideration of transfer of the portion of the line not subject to the agreement between Conrail and the Townships. Thus, this is not a stand-alone item and may take a little time to work out or might await further developments. Indeed, the Board's decision was only two months ago and NSR's consummation letter more recent than that.

I do not view this as expressing any opinion or conclusion with respect to the County's position in the State proceedings. Any agreement with the County would likely be conditional on the outcome of those proceedings and would be in consequence of other considerations such as the transfer of the portion of the line along the Susquehanna River.

If I have misinterpreted your message or missed some point in this response, or if there is some further issue to be addressed or problem with which I appear to be unaware, I would appreciate speaking to you directly about the matter so we can be sure to properly communicate on the issues. Although I would be glad to disclose the substance of any such conversation, if you believe further discussion is necessary, or respond to any issue that is not apparent to me in a writing to all parties, a conversation also would spare others either the review of further instruction needed to get me to see the point or a review e-mails that are not relevant to their concerns.

Please be assured that NSR is well aware of the requirements of the MOA and the steps necessary to make any changes with respect to it. We will see that it is performed or in the alternative that it is only changed or assigned in a proper manner. However, we request that you understand that there are good reasons for us not to have proceeded with the MOA studies immediately without taking other matters, including the pendency of a decision on the County's most recent filings before the Board, into consideration. We trust that we are correct in our general evaluation of and approach to this matter. We also hope that you will agree that this approach is neither improper nor unreasonable and that some additional time in concluding this matter is reasonable under the circumstances. I appreciate your previous help and advice on this matter and will appreciate any guidance that you can give on any matters that may currently be misunderstood or otherwise at issue.