

SERVICE DATE – APRIL 27, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1321X

OHI-RAIL CORPORATION—DISCONTINUANCE EXEMPTION—IN PERRY AND
MUSKINGUM COUNTIES, OHIO

Docket No. AB 167 (SUB-NO 445N)¹

CONRAIL ABANDONMENT OF LINES IN ZANESVILLE, OHIO

Digest:² The Board denies Newark, Heath, & Buckeye Lake Scenic Railway's petition to reopen and dismisses as moot its motion for preliminary injunction.

Decided: April 27, 2026

On June 16, 2025, in Docket No. AB 1321X and Docket No. AB 167 (Sub-No. 445N), Newark, Heath, & Buckeye Lake Scenic Railway, doing business as the Zanesville and Western Railroad Company (Z&W), filed a petition to reopen a discontinuance proceeding and vacate the discontinuance; Z&W simultaneously filed a motion for a preliminary injunction in those dockets seeking to prohibit the removal of track during the pendency of this proceeding. On July 7, 2025, the Ohio Rail Development Commission (ORDC), the successor to the Ohio Rail Transportation Authority (ORTA), replied in opposition to Z&W's petition to reopen and vacate.³ For the reasons explained below, the Board will deny Z&W's petition and dismiss its motion for preliminary injunction as moot.

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

³ On July 7, 2025, ORDC also filed a reply to the motion for preliminary injunction. In that reply, ORDC stated that the motion for preliminary injunction had become moot because ORDC had agreed not to remove any track during the pendency of this proceeding. (ORDC Reply 16, July 7, 2025.) On July 28, 2025, Z&W filed a reply to ORDC's reply, in which it agreed that its motion for preliminary injunction was now moot due to ORDC's agreement not to remove any track. (Z&W Reply 3, July 28, 2025.) Because both parties agree that the motion for preliminary injunction is moot, the Board will dismiss it.

BACKGROUND

Z&W states that the rail line at issue (the Line), which is owned by ORDC, was formerly known as the Glass Rock Branch. (Z&W Pet. 1.) The Line consists of the Fultonham Running Track from milepost 0.0 to milepost 3.1 (Glass Rock-East) and the Z&W Industrial Track from milepost 45.8 to milepost 57.5 (Glass Rock-West). Conrail Aban. of Lines in Zanesville, Ohio, AB 167 (Sub-No. 445N), slip op. at 1 n.4 (STB served March 13, 2023). The Line was included as part of the 38.2 miles of rail line in Zanesville, Ohio, that the Consolidated Rail Corporation (Conrail) was authorized to abandon on March 12, 1982, by the Interstate Commerce Commission (ICC), pursuant to the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. § 748.⁴ Id. at 1. However, that abandonment authority was never consummated. Ohio Rail Dev. Comm’n—Pet. for Declaratory Ord., FD 36387, slip op. 4 (STB served Dec. 22, 2020). Instead, ORTA purchased the Line from Conrail in 1982, and a succession of carriers have since operated over the Line, the most recent being the Ohi-Rail Corporation (Ohi-Rail) from 1987 to 2024. Id. at 2, 4. Z&W states that Ohi-Rail’s lease was non-exclusive and that since 2008, Z&W has had a lease allowing it to conduct passenger excursion service on the Line. (Z&W Mot. 2.) According to Z&W, the most recent iteration of its lease of the Line began in 2018. (Z&W Pet. 2.)

By petition filed February 18, 2020, in Docket No. FD 36387, ORDC requested that the Board issue a declaratory order finding that ORDC could pursue interim trail use/rail banking for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), upon authorization for Ohi-Rail, the operator at the time, to discontinue common carrier service. By decision served December 22, 2020, the Board granted ORDC’s petition. Ohio Rail Dev. Comm’n, FD 36387, slip op. at 1, 6-7.

On January 12, 2023, in Docket No. AB 1321X, Ohi-Rail filed a verified notice of exemption to discontinue service and terminate its lease over the Line. Notice of the exemption was served and published in the Federal Register on February 1, 2023 (88 Fed. Reg. 6801), and the exemption became effective on March 3, 2023. In the notice of exemption, the Board, through its Director of the Office of Proceedings (Director), explained that “because the Line has already been authorized for abandonment, [the] discontinuance does not require an environmental review.” Ohi-Rail Corp.—Discontinuance of Serv. Exemption—in Perry & Muskingum Cntys., Ohio, AB 1321X, slip op. at 3 n.4 (STB served Feb. 1, 2023). On February 13, 2023, the Perry County Board of Commissioners filed a request for issuance of a certificate of interim trail use or abandonment (CITU) under the Trails Act to establish interim trail use/rail banking on the Line, to which ORDC subsequently consented. In a decision served on March 13, 2023, the Board issued a CITU. Conrail Abans. of Lines in Zanesville, Ohio, AB 167 (Sub-No. 445N) (STB served, Mar. 13, 2023). On April 8, 2024, that CITU was vacated and a replacement CITU was issued substituting Muskingum Valley Park District (MVPD) as the trail

⁴ Section 748 states that applications for abandonment of Conrail’s lines “shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49.” The ICC concluded that this provision required it to grant any such application “without examination,” and therefore without any environmental review. Conrail Abans. Under NERSA, 365 I.C.C. 472, 475 (1981).

sponsor. Conrail Abans. of Lines in Zanesville, Ohio, AB 167 (Sub-No. 445N) (STB served, Apr. 8, 2024). ORDC states that on April 4, 2025, ORDC and MVPD jointly notified the Board that a trail use agreement was reached, and the Line was railbanked. (ORDC Reply 11, July 7, 2025.)

Z&W states that in 2018, citing unsafe conditions, ORDC removed track from the grade-crossing at State Road 93—railroad milepost 0.83 on Glass Rock East—cutting Glass Rock East in two and stranding Z&W’s equipment east of the crossing. (Z&W Pet. 2.) Z&W further claims that the segment west of the crossing became stranded from the national rail network. Id. In addition, Z&W states that ORDC has also removed or paved over crossings at milepost 55.89, milepost 50.00, and milepost 48.18. Id.

Positions of the Parties. Z&W argues that the Board materially erred in determining that the environmental laws for a discontinuance of service either had been satisfied or did not apply to Ohi-Rail’s verified notice of exemption, and it requests that the discontinuance be vacated until the environmental process is completed. (Z&W Pet. 4.) Z&W argues that the Board’s regulations implementing the National Environmental Policy Act (NEPA) require that the Board conduct an environmental review in a discontinuance proceeding unless “it is one ‘where the affected line will continue to be operated.’” (Z&W Pet. 5 (quoting 49 C.F.R. § 1105.6(c)(5)).) Z&W claims that the exclusion under 49 C.F.R. § 1105.6(c)(5) is premised on the ICC’s conclusion that that there is no cognizable environmental effect where (1) the track is not being removed and (2) rail traffic is continuing. (Z&W Pet. 5 (citing Implementation of Env’t Laws, EP 55 (Sub-No. 22A) (ICC served Mar. 20, 1990)).) Z&W argues that this exclusion did not apply here because freight traffic was not going to continue to move and the track would be, or already had been, salvaged. (Id. at 5.) In addition, Z&W argues that environmental review has been required on publicly owned lines where discontinuance would leave a line without any regulated freight service, even where the track was not being salvaged. (Id. at 6 (citing S. Pac. Transp. Co.—Aban. Exemption—L.A. Cnty., Cal., 8 I.C.C. 2d 495, 518 (1992)).)

Z&W further argues that the Board’s granting of discontinuance authority to Ohi-Rail demonstrates that the discontinuance was not covered by NERSA. (Id. at 9.) Z&W states that transactions under NERSA were exempted from the requirements of chapter 109 of title 49, which includes the requirement to obtain Board authority for discontinuances. (Id.) According to Z&W, if NERSA covered the Ohi-Rail discontinuance, there would have been no need for Ohi-Rail to seek Board authorization. (Id.) Thus, Z&W argues that, because the Board required Z&W to obtain discontinuance authority, it must have concluded that NERSA, and its concomitant exemption from environmental review, did not apply. (Id.)

Finally, Z&W asserts that the Board did not explain its reasoning for finding that environmental review was unnecessary. It posits that the Board “might have thought” that (1) an environmental review had previously been conducted because the Line was authorized for abandonment, or (2) the discontinuance fell under NERSA and thus was exempt from environmental review. (Z&W Pet. 7.) Z&W claims, however, that neither of these potential rationales is legally sound. It asserts that no environmental review was conducted with respect to the Line per the agency’s regulations governing NERSA abandonments and that, because the NERSA exemption from environmental review applies only to abandonments by Conrail of lines

in the Conrail final system plan, the NERSA exemption is inapplicable to Ohi-Rail's discontinuance. (Id. at 7-8.)

ORDC, in its reply, states that the notice of exemption for discontinuance authority followed the guidance provided by the Board in an earlier declaratory order proceeding. (ORDC Reply 1 n.3, and 2 n.8, July 7, 2025); see Ohio Rail Dev. Comm'n—Pet. for Declaratory Ord., FD 36387 (STB served Dec. 22, 2020). ORDC argues that, because the Line was authorized for abandonment under NERSA, any subsequent discontinuance or abandonment of the Line is therefore exempt from NEPA and the requirement to conduct an environmental review. (ORDC Reply 6-8, July 7, 2025.) ORDC also claims that no environmental review was required because railbanking a line under the Trails Act does not require environmental review. (Id. at 9-10.) In addition, according to ORDC, granting Z&W's petition would "effectively cancel out two years of negotiations to railbank the [Line]," which would deter future efforts to railbank rail lines. (Id. at 13.)

DISCUSSION & CONCLUSIONS

Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1152.25(e)(4), the Board may reopen a proceeding because of "material error, new evidence, or substantially changed circumstances." The asserted grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected for reopening to be granted. See Neb., Kan., & Colo. Ry.—Aban. Exemption—in Decatur, Norton, & Phillips Cntys., Kan., & Harlan Cnty., Neb., AB 1032X, slip op. at 2 (STB served May 24, 2018). Z&W argues that the Director committed material error in declining to require an environmental review when Ohi-Rail sought authority to discontinue its operations, because such a review is required under the Board's regulations. For the reasons explained below, Z&W's petition to reopen will be denied.

Under the Board's regulations at 49 C.F.R. § 1105.6(b), the Board will "normally" prepare an environmental assessment for discontinuance of freight service except for (i) discontinuance of freight service under modified certificates issued under 49 C.F.R. § 1150.21; and (ii) discontinuance of trackage rights where the affected line will continue to be operated. Although neither of those circumstances is present here, the Board "may reclassify or modify [its] requirements for individual proceedings." 49 C.F.R. § 1105.6(d). Indeed, "inherent in NEPA . . . is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare [environmental documentation] based on the usefulness of any new potential information to the decisionmaking process." Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 188 (2025) (quoting DOT v. Pub. Citizen, 541 U.S. 752, 767 (2004)); see also id. at 184 (emphasizing role of "common sense" in NEPA reviews).

The Board often does not require an environmental review in discontinuance proceedings where the line has already been abandoned or authorized for abandonment. See, e.g., Midcoast Rail Serv., Inc.—Discontinuance of Serv. Exemption—in Cumberland, Knox, Lincoln, Sagadahoc Cntys., Me., AB 1341X, slip op. at 4-5 (STB served Dec. 3, 2024); Norfolk S. Ry.—Discontinuance of Trackage Rights Exemption—in Cuyahoga Cnty., Ohio, AB 290 (Sub-No. 553X), slip op. at 2 n.4 (STB served Sept. 25, 2024); State of Maine—Acquisition of Certain Lines in Maine, slip op. at 7 (Sept. 18, 2008). That could be because the line "has already been

subject to environmental review during the abandonment proceeding,” Norfolk S. Ry., AB 290 (Sub-No. 553X), slip op. at 2 n.4. The Board has also reasoned that such an environmental review is unnecessary because it “would not inform” the Board’s decision whether to authorize discontinuance since the Board has “no authority” to condition disposition of the line owner’s physical rail assets in cases where the “line has already been authorized for abandonment.” Cent. Ill. R.R.—Discontinuance of Serv. Exemption—in Peoria Cnty., Ill., AB 1066X, slip op. at 5 (STB served Dec. 23, 2005). See also 42 U.S.C. § 4336e(10)(B)(i)(II) (excluding from the definition of “major Federal action” those actions “with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project”).

Here, an environmental review would be of no informational value to the Board’s decision-making regarding Ohi-Rail’s discontinuance. The only reasonably foreseeable impacts from Ohi-Rail’s discontinuance that could be analyzed would be those resulting from traffic diversions and salvage by ORDC. See generally Permitting Reform—Envtl. Review Process, EP 779, slip op. at 9-12 (STB served Mar. 25, 2026). However, the record indicates that there was no potential for traffic diversion from the Line post-discontinuance because no freight rail service had occurred over the Line for several decades. See Ohio Rail Dev. Comm’n, FD 36387, slip op. at 2. And as the Board previously explained, because ORTA acquired the Line when it was approved for abandonment but not yet abandoned, ORDC is exempt from Board regulation pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Pol. Subdivisions (Common Carrier Status of States), 363 I.C.C. 132, 135-36 (1980), aff’d sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Ohio Rail Dev. Comm’n, FD 36387, slip op. at 6.⁵ Accordingly, the Board has no authority over any salvage that would be conducted by ORDC should it choose to abandon the Line, nor may it impose mitigating conditions. In sum, there would be no reason for the Board to reopen the discontinuance proceeding in this case to conduct an environmental review where it cannot regulate the owner of the Line or its removal of track. For these reasons, the Board did not commit material error when it declined to conduct an environmental review in connection with Ohi-Rail’s discontinuance.

For the reasons explained above, Z&W’s petition is denied and its motion for a preliminary injunction is dismissed as moot.

It is ordered:

1. Z&W’s petition to reopen is denied.
2. Z&W’s motion for preliminary injunction is dismissed as moot.

⁵ Z&W cites S. Pac. Transp. Co., 8 I.C.C. 2d 495, for the proposition that environmental review has been required for state-owned lines where discontinuance would leave a line without any regulated freight service. (Z&W Pet. 6.) However, in that case, the state entity that owned the line was a common carrier subject to the agency’s regulation. ORDC, on the other hand, is exempt from the Board’s regulation under Common Carrier Status of States.

3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.