

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

AB-290 (Sub-No. 394X)

NORFOLK SOUTHERN RAILWAY COMPANY
— ABANDONMENT EXEMPTION —
IN AURORA, PORTAGE COUNTY, OHIO

AB-1257

CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC
— DISCONTINUANCE OF LEASE AND OPERATION AUTHORITY —
IN AURORA, PORTAGE COUNTY, OHIO

MOTION TO STAY ABANDONMENT EXEMPTION
&
MOTION TO RENDER ABANDONMENT EXEMPTION VOID AB INITIO
&
MOTION FOR FINANCIAL FITNESS REVIEW OF OPERATOR CLEVELAND COMMERCIAL
RAILROAD COMPANY, LLC

OF

ALLABOARDOHIO
A non-profit entity

244830
244831

ENTERED
Office of Proceedings
December 11, 2017
Part of
Public Record

Brendan Delay
Tel: (440) 333-3708
Fax: (440) 333-1319
Attorney for AllAboardOhio

December 11, 2017

No Way To Run a former Erie Railroad line.

Beltway baloney. Norfolk Southern Railway Company inherited from Conrail a section of ex-Erie Railroad mainline and neglected it. It flunked on railroad revitalization in a suburban district of an industrialized city with an existing rail passenger authority. Rather than get an "F" from the Surface Transportation Board it attempts a quickie abandonment application. The Federal Register notice was not even published until December 1, 2017, noting a deadline of December 11, 2017 to oppose the exemption. The timing of the November 13, 2017 exemption may be after the Indiana Bat season in Ohio, to duck an environmental review, and to occur during Christmas and New Years Holiday distraction. The Board is being fed a holiday thin sandwich of Beltway Baloney for speedy consumption. The Board is being played for stupid.

If NSR had no intention of living up to its common carrier obligation, then it was required to file for abandonment soon after it took title from Consolidated Rail Corporation in 2002. See deed of the Portage County Recorder. For the most part, this is 100 foot wide mainline, wide enough even for 3 tracks. It is well suited for high speed rail between Pittsburgh and Cleveland. Germany and France, Japan and now China has high speed passenger rail. See letter of All Aboard Ohio, signed by Executive Director Ken Prendergast, and previously filed separate.

The Interstate Commerce Commission should never have indulged the major railroads before the Staggers Act by allowing the abandonment of parallel railroad tracks in the northern United States. This Erie Railroad line should never have been severed. When it was severed, it was severed in the wrong place, one and one half miles away from a major sand quarry in Mantua, Ohio. Between it and Ravenna, Ohio is the largest sand deposit in Northern Ohio, laid down by glaciers. This sand could have provided steady freight traffic to Conrail and then later to the Norfolk Southern Railway Company.

This Verified Notice in AB-290 (Sub-No. 394X) will be rendered void *ab initio*, due to concealed false information, what has been obscured, and misleading information.

Ominously, the Federal Register publication contains a warning: "If the Verified Notice contains false or misleading information, the exemptions are void *ab initio*." This Verified Notice will be rendered void *ab initio*, due to what has been concealed, what has been obscured, and material misleading information. It amounts to de facto abandonment over many years. A valuable portion of the American railroad system was neglected and dismantled and paved over with asphalt or concrete at road crossings. A falsehood is that if a shipper had made a service request in the past two years a locomotive and cars could have been dispatched to haul cargo in a week or two. The applicants would have had to hire a heavy lift Sikorsky helicopter to haul cargo from a shipper on this severed mainline.

This pretense at the common carrier obligation equals the misleading, bad faith filings and misconduct of Rail Ventures, Inc. of Youngstown, Ohio in the 1997 to 2008 era. The undersigned was one of the attorneys representing shippers on the line and the Columbiana County Port Authority, which purchased the line through the Offer of Financial Assistance procedure.

Perverse incentives for abandoning this mainline.

The Norfolk Southern Railway has not told the Board it has entered into at least verbal discussions with an electric power line authority for a permanent easement on this 5.5 mile section of rail line to erect an unsightly high pole line of high tension electric wires. Its lawyers have not informed the Board that the entire 5.5 mile section of rail line is festooned with recent pink plastic surveyor tape attached to trees allowed to grow on the line along with wooden surveyor stakes affixed to the center line of the westbound mainline. The wooden surveyor stakes are most prominent at road crossings, such as at Chamberlain Road and Route 82 and Chillicothe Road. Blue plastic surveyor ribbon is also attached to sections of the line, attached to trees.

One survey may be commissioned by an electric power line company, which was done in mid-November 2017 according to local residents, and City of Aurora service department employees, who say an electric power line company has made verbal inquiries about the rail line but have put nothing in writing. This low documentation is part of stealth abandonment.

The other survey may be one commissioned by the Portage County Park District, perhaps for a paid purchase from Norfolk Southern of the right of way or an easement. Big money from a park District and an electric utility creates a perverse incentive for the Norfolk Southern to abandon the line. Add to it, ending the need to pay property tax and any future line maintenance expense, and the perverse incentive grows. 19 years of no tamping and surfacing was a deferred maintenance savings, which adds to the perverse incentive to abandon. The Town of Mantua would get away with paving over a major road next to a shipper, and its cohort The City of Aurora would get away with paving over major well trafficked intersections with no need to restore them to railroad operations. It would be as if a failing high school senior is handed an undeserved diploma, allowed to sell his parents' neglected home to a park district, then keep the cash, then given a college scholarship with free dormitory rent.

United States Census statistics show Aurora, Ohio has grown in 2000 from about 10,000 residents to over 15,000 residents in 2015. The need and potential for rail passenger service into Cleveland has grown. See letter of AllAboardOhio.

Yet, it may be that since taking over from Consolidated Rail Corporation, the Norfolk Southern Railway has not run a loaded freight train on this line to Aurora, Ohio or Mantua, Ohio. Only Consolidated Rail Corporation ran freight trains, and these may

have ceased in 1996. The Board should request this shipping and train movement information from the Norfolk Southern Corporation.

This attempt at an exempt abandonment filing bulges with misleading information.

This attempt at an exempt abandonment filing bulges with misleading information. It has been neglected and allowed to be abused by the City of Aurora, Ohio and Mantua Township and the City of Solon, Ohio. A shipper could make a request to ship but no locomotive could reach it since the rails have been removed at certain locations, paved over at other crossings, a section of panel of rail and ties have been stacked on the mainline, and all signals, electric meters to crossing signals, gate arms, and cross bucks have been removed. Not one word has been written about any of these facts of railroad vandalism. The timetable for the Norfolk Southern Dearborn Division from 2005 shows that this railroad was last tamped and surfaced in June of 1988, but it does not list the line at all from Solon to Mantua—as if it did not exist in the mind of the Norfolk Southern executives.

Google Earth reveals the lack of rail at road crossings and pave overs at road crossings.

Lawyers who perform desk work become subject to subtle self deceptions. They can delude themselves into believing no one will be able to check on far away realities. Lawyers sitting at desks asked to write applications to nearby national bureaucracies may not travel via Amtrak from Washington Union Station to the Cleveland Amtrak station, then motor via Uber the 21 miles or so to Aurora, Ohio to view the pave-overs, tear outs and trees growing between the tracks. To do so would require effort, and risk second guessing the results oriented legal work asked for by the Norfolk Southern Railway Corporation.

These Beltway lawyers themselves have a perverse incentive to write up incomplete, deceptive abandonment applications: they get paid significant hourly fees to do what they are told, and they do not suffer the loss of prosperity that Ohio citizens suffer from being deprived of rail freight service and passenger service. The loss to their far fellow American citizens does not matter. These Beltway attorneys make no products, and do not ponder how a plastic producer confined to truck service may end up with higher freight costs, or deprived of the heavy haul capacity of railroads to move in heavy equipment and move out heavy equipment for refurbishing and repair.

The Board staff can click on to Google Earth, type in Aurora, Ohio as the location, then view the only railroad in that city. Go closer and then the paved over, dismantled crossings are plain to see.

The STB staff can view this railroad desecration in the pictures attached hereto. Also, a report by a certified track inspector is attached, detailing the defects to line

visible from roadside. From east to west, the misleading defects to this five and one half miles of railroad are enumerated:

1. Chamberlain Road in Mantua Township, Ohio has been paved over with asphalt by the township, and concrete jersey barriers have been set on the right away to block the rails from any transit by a locomotive or freight cars. The large industry, Cantex, has a bumper stop awaiting rail shipment, but the train would not be able to cross Chamberlain Road.

2. The signals, electric meters to crossing signals, gate arms, and cross bucks have been removed from the Chamberlain Road crossing.

3. The Route 82, Royalton Road, Aurora, Ohio crossing has been paved over with concrete and rail and ties removed. The rail at that location is 136 pound to the yard Lackawanna. A date nail at that location is marked 48 to show that a tie was produced at the factory in 1948.

4. The City of Aurora, Ohio has paved over with asphalt the Route 306 Chillicothe Road crossing, removed rail and the crossing panel of rail and ties which were then placed on top of the rail track structure to block the mainline.

5. The City of Aurora, Ohio paved over with asphalt the Treat Road crossing, removing rail and obscuring the rail and tie structure.

6. Who allowed the pave over of the private crossing between Route 306, to the north of Chillicothe Road, and between Treat Road, in Aurora, Ohio blocking track movements?

7. The Geauga Lake Road crossing has been paved over with asphalt. (Gauga Lake Park was a well attended amusement park for decades.)

Norfolk Southern Railway has transgressed the requirement of seeking advance authorization from the Board before discontinuing rail operations, as required by 49 U.S.C. 10901. By removing crossing signals, cross bucks and protective gate arms and in allowing pave overs of its rail at road crossings, it has not lived up to its common carrier obligation.

Surface Transportation Board Decision Service Date —April 28, 2008, STB Docket No. AB-556 (Sub—No. 2X) Railroad Ventures, Inc.—Abandonment Exemption —Between Youngstown, Ohio and Darlington, PA in Mahoning and Columbiana Counties, Ohio and Beaver County, PA. disciplined a new railroad owner which had removed crossing signals and allowed government units to pave over road crossings. A set aside fund of \$375,000 (Three Hundred Seventy Five Thousand Dollars) was ordered to pay for part of the price for restoring the damage done to rail signals.

“The Y&S line was an operating line of railroad serving freight shippers on the day before RVI assumed control, cancelled the lease of the existing operator and discontinued rail operations – all without seeking advance authorization from the Board as required by 49 U.S.C. 10901. When RVI later sought after-the-fact authority to acquire the Y&S line (to avoid possible enforcement action for its illegal conduct) in April of 1997, it represented to the Board that it sought that authority “for the purpose of conducting rail freight common carrier operations on the former Y&S line.”^[23] Based on this representation, the Board, in July 1997, denied petitions filed by CCPA to declare RVI’s acquisition unlawful and revoke the authorization.

When RVI made this representation to the Board, it had already owned the Y&S line for nearly 6 months and thus should have been well aware of the condition of the line. If the line was in such disrepair in April 1997 that it was impossible to conduct common carrier rail freight operations, as RVI now claims, then its representations to the Board were materially misleading, and RVI should have sought authority more promptly to have the line removed from the interstate rail network, following its receipt of authority to operate the line. Instead, it was not until May 1999 – more than 2 years after it made its commitment to carry out its common carrier obligation – that RVI sought appropriate authority from the Board to remove the common carrier obligation that was attached to the Y&S line,^[24] thereby triggering the OFA process.^[25] Accordingly, RVI is estopped from arguing that the Y&S line was in such poor condition when it acquired the line that it cannot be held responsible for the line’s deteriorated condition. In any event, RVI’s own evidence shows that, as of 1999 – well into RVI’s tenure as owner – 8 of the 9 crossing signals were functional.^[26] Yet when CCPA acquired the line in January 2001, none of the signals were operational.^[27] The record is clear that the signals became non-operational during RVI’s ownership of the line.^[28]

RVI cites cases that it says place limits on the maintenance obligations of unprofitable carriers and rail lines.^[29] But those cases hold only that, in certain situations, a carrier has the right to abandon a line rather than continue service. They do not stand for the principle, as RVI claims, that, prior to abandonment, a carrier has no obligation to provide service or maintain its line. Thus, none of the cases cited by RVI undercut the general proposition that, where shippers have requested service, a carrier must either keep its track in operating condition or promptly obtain authority to be relieved of the common carrier obligation. See G.S. Roofing Prods. Co. v. STB, 143 F.3d 387, 392 (8th Cir. 1998). Nor do they undercut the court’s holding in RVI v. STB, 299 F.3d at 560, that the Board acted reasonably in holding RVI accountable for the damage to the signal devices by requiring the escrow fund. “

Examples of truncated mainline railroads which stay in service to haul freight:

1. Youngstown and Southern Railroad, from Youngstown to Darlington, Pennsylvania, which was stub ended in 1947 after a bridge collapsed west of Darlington which connected it to a north south mainline.

2. Ohi-Rail Corporation, which operates a stub ended ex-NYC mainline for one mile, which operates from the Minerva Yard and then alongside Elizabeth Street on the former mainline to Alliance, Ohio.
3. Ohio Central Railroad operated a line hauling coal from Cadiz, Harrison County, Ohio north to the Panhandle mainline.
4. Ex-Erie Railroad mainline:
 - Barberton to Sterling,
 - Mansfield to West Salem,
 - Mansfield to Ontario, Ohio,
 - Marion, Ohio to the GATX plant,
5. The Ex-Pennsylvania Railroad Industrial to the north and south of Orrville, Ohio.
6. Segments of the ex-Lake Shore and Michigan Southern Railroad in Michigan.
7. The Falls Railroad, running freight from Niagara Falls, New York to Brockport, New York where Conrail truncated the mainline. A tourist train also operates on the segment near Albion, New York.

Ohio statutes govern where railroads cross highways and streets.

[4955.201 Abandonment of railroad track.](#)

(A) If the interstate commerce commission approves the abandonment of a railroad track that crosses a road or highway at grade, the railroad that owned the track immediately after the approval of the abandonment shall remove the track at the crossing and fill the space previously occupied by the rails with the same material that comprises the road or highway at the crossing. Upon completion of the work, the surface of the crossing where the rails previously were located shall be the same height as the surface of the road or highway abutting the crossing. The restored portion of the road or highway shall meet the construction standards applicable to the road or highway of which the restored portion is a part.

(B) No railroad shall fail to remove from a crossing the rails that comprise a track whose abandonment has been approved or fail to fill the space previously occupied by the rails as required by division (A) of this section.

Effective Date: 06-30-1993 .

[4955.21 Service of notice.](#)

The officers having charge of a public highway, street, or alley intersected by a railroad shall serve a written notice upon the nearest station agent or section foreman having charge of that portion of the railroad where such intersection occurs that the crossing, approach, or sidewalk described in section [4955.20](#) of the Revised Code must be built or repaired, setting forth its kind and extent and the time and manner of constructing it, as ordered by the legislative authority of the municipal corporation or board of township trustees. A railroad company so notified must comply with such notice within a period of thirty days after receiving it. On failure to do so, the board or legislative authority may cause such crossing, approach, or sidewalk to be constructed or repaired as

ordered, and recover the cost of so doing with interest in a civil action against the railroad company in the name of the board or municipal corporation.

Effective Date: 10-01-1953 .

[4955.22 Failure to construct or repair crossings or sidewalks - forfeiture.](#)

A railroad company which neglects to comply with sections [4955.20](#) and [4955.21](#) of the Revised Code is liable to pay damage to the municipal corporation or township in which the highway is situated in the sum of thirty dollars for such neglect, and a further sum of ten dollars per day for each day such company fails to comply with the terms of such sections, to be recovered in an action brought in the name of the municipal corporation or township. The prosecuting attorney of the county shall prosecute to judgment any claim arising under such sections without charge to the municipal corporation or township.

Effective Date: 10-01-1953 .

[4955.23 Crossings above streets.](#)

No person or company owning or operating a railroad which crosses over and above a street less than seventy feet in width, in any city in this state, at an elevation above such street sufficient to permit persons to pass and repass along such street beneath the crossing, shall place, cause to be placed, or permit to be or remain in the street beneath such crossing or bridge, any pier or other stay or support for it, unless the placing or maintaining of such pier, stay, or support is authorized by the city in which the crossing is situated by ordinance, or permit such crossing or bridge to be or remain in such condition that iron, coal, other hard substance, fluid, or noisome matter can fall or drop through such crossing or bridge upon persons traveling or passing beneath it.

Effective Date: 10-01-1953 .

[4955.24 Construction and maintenance of bridge - forfeiture.](#)

A person or company owning or operating a railroad that fails to comply with the requirements of or violates section [4955.23](#) of the Revised Code, for each day during the continuance of such failure or violation, shall forfeit to such city one hundred dollars, to be recovered in a civil action in the city's name, against the owner or operator of such railroad, or both, as the city elects. Like recovery may be had for subsequent failures and violations.

Effective Date: 10-01-1953 .

[4955.25 Legislative authority may regulate use of bridge.](#)

The legislative authority of a city may prohibit the switching of freight engines, trains, or cars, over or on a crossing or bridge referred to by section [4955.23](#) of the Revised Code, the sounding of locomotive steam whistles on or near such bridge, and the standing or stopping of a railroad engine over or on such crossing or bridge, and by ordinance, may constitute a violation of such prohibition an offense and provide for the punishment of any person guilty of such violation.

Effective Date: 10-01-1953 .

[4955.26 Crossing of highway to cemetery.](#)

All railroads constructed across an avenue or public highway leading from a city to a public cemetery of such city located within or without the limits of the city, shall be constructed so as to pass under or over such avenue or highway at an elevation or depression that will allow the unobstructed passage of all vehicles necessary for any person to use on such avenue or highway.

Effective Date: 10-01-1953 .

[4955.27 Private crossing.](#)

When a person owns fifteen or more acres of land in one body through which a railroad passes, which land is so situated that he cannot use a crossing in a public street, lane, road or other highway in going from his land on one side of the railroad to that on the other side without great inconvenience, at his request the company or person operating such railroad, at the expense of such company or person shall, within four months after such request, construct a good and sufficient private crossing across such railroad and the lands occupied by the company, between the two pieces of land to enable such landowner to pass with a loaded team and over which he may go at all times when such railroad is not being used at the crossing, or so near to it as to render passing thereat dangerous.

Effective Date: 10-01-1953 .

[4955.28 Expense of private crossing - right of entry.](#)

If, for four months after the request by a landowner for that purpose, the company or person neglects to construct a good and sufficient private crossing as provided in section [4955.27](#) of the Revised Code, after reasonable notice to the agent of the company for receiving and shipping freight at the station on the railroad nearest to the land where it is proposed to construct such crossing by the landowner of the time when he will proceed to construct it, such landowner may enter upon the lands of the company at any point he wishes between the two pieces of his land and construct such crossing. Such company or person is liable to such landowner for all reasonable expense of such construction, not exceeding fifty dollars, which he may recover in an action against such company or person.

Effective Date: 10-01-1953 .

[4955.29 Exception.](#)

Sections [4955.27](#) and [4955.28](#) of the Revised Code do not apply to any case in which compensation for building a private crossing is considered and estimated as part of the consideration to be paid for the right of way, so far as the right to private crossing has been or may be settled or paid for. Such sections do not affect, in any manner, any contract or agreement between any railroad company or person having control or management of a railroad and the proprietor or occupants of lands adjoining, for the construction or maintenance of railroad crossings.

Effective Date: 10-01-1953 .

[4955.30 Freightways may be constructed.](#)

A person owning or operating a coal or iron-ore mine, stone quarry, rolling mill, or machine shop, who, as a means of removing the product thereof, uses or desires to use a railway, may construct one and run cars on it, over or under any railroad or public highway, the consent of the owner of the fee in the land at such crossing first being obtained. Such railway shall be so constructed that it will not impede or interfere with the running of cars or the travel upon such railroad or highway, or in any manner injure or impair either, or any switch, building, or appurtenance connected with or belonging to any railroad or highway. When such freightway is constructed over a railroad, it shall be at the height of at least eighteen and one-half feet in the clear above the rails of the railroad.

Effective Date: 10-01-1953 .

[4955.31 Plan must be approved.](#)

Before a person constructs a railway across a railroad as provided in section [4955.30](#) of the Revised Code, he shall submit the plan of construction to the public utilities commission for its approval, which at the cost of such person for traveling

expenses or otherwise, must see that the structure in all respects conforms to the requirements of such section.

Effective Date: 10-01-1953 .

4955.32 Use of horn or alternative audible warning at highway or crossing.

(A) As used in this section, "lite locomotive consist" means a consist of locomotives not attached to any piece of equipment or attached only to a caboose.

(B) When the locomotive in the lead of a train, when a lite locomotive consist, or when an individual locomotive is approaching a public highway or a grade crossing , either of the following shall occur:

(1) The engineer or person in charge of the locomotive shall sound the locomotive horn in accordance with 49 C.F.R. part 222;

(2) An alternative audible warning system approved by the public utilities commission under section 4955.321 of the Revised Code shall be activated in accordance with guidelines established by the commission.

(C)

The establishment of an alternative audible warning system does not preclude the sounding of a locomotive horn by an engineer or other person in charge of a locomotive in an emergency situation, as determined by the sole judgment of the engineer or other person.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 10-27-2000 .

4955.321 Alternative audible warning system.

The public utilities commission may evaluate alternative systems for providing an audible warning of an approaching locomotive . The commission may approve the use of an audible warning system as an alternative to the horn sounding required under division (B)(1) of section 4955.32 of the Revised Code only if it determines that the alternative audible warning system complies with applicable federal requirements for an audible warning of an approaching train and only if train-activated warning devices also are present at any public highway or grade crossing at which the alternative audible warning system is installed. The commission shall establish guidelines for the use and operation of any alternative audible warning system it approves.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 10-27-2000 .

4955.322 Immunity from liability at private crossings.

The sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad company that operated the locomotive, a board of county commissioners, or any local authority, or against the employees or agents of the company, board, or authority.

Added by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

4955.33 Crossbuck signs.

At all points where its railroad crosses a public road at a common grade, each company shall erect crossbuck signing at positions at each such crossing that are in accordance with the department of transportation manual for uniform traffic control devices, adopted under section [4511.09](#) of the Revised Code, to give notice of the proximity of the railroad and warn persons to be on the lookout for the locomotive. Any such signing that has been or is erected in accordance with this section may lawfully be continued in use until it is replaced. A company that neglects or refuses to comply with this section is liable in damages for all injuries that occur to persons or property from such neglect or refusal.

Amended by 129th General Assembly File No. 70, HB 349, §1, eff. 4/20/2012.
Effective Date: 01-01-1995 .

The Board is requested to order the following information to be provided within 45 days from The Norfolk Southern Railway Corporation:

1. Who allowed the Village of Mantua, Ohio to pave over with asphalt the Chamberlain Road crossing, remove rail and place concrete jersey barriers to block the rails? When was it done? How much did this pavement work cost within the landlines of the railroad real property at Chamberlain Road?
2. Who allowed the City of Aurora, Ohio to pave over with concrete the Route 82 crossing, remove rail and place concrete jersey barriers to block the rails? When was it done? How much did this pavement work cost within the landlines of the railroad real property at Route 82?
3. Who allowed the City of Aurora, Ohio to pave over with asphalt the Route 306 Chillicothe Road crossing, remove rail and the panel of rail and ties on top of the rail track structure to block the rails? When was it done? How much did this pavement work cost within the landlines of the railroad real property at Route 306 Chillicothe Road? What was the name of the contractor?
4. Who allowed the City of Aurora, Ohio to pave over with asphalt the Treat Road crossing, remove rail and obscure the rails? When was it done? How much did this pavement work cost within the landlines of the railroad real property at Treat Road? What was the name of the contractor?
5. Has the City of Aurora, Ohio discussed with an electric utility the use of this railroad right of way for an overhead power line easement?

6. Who or what entity awarded \$60,000 (Sixty Thousand Dollars) to acquire part of the former Erie Railroad mainline east of this section sought to be abandoned?

7. Here is the entire recent message to the members of the Portage County Park District:

"The District was also awarded a \$60,000 grant as reimbursement for the acquisition of 1.2 miles of corridor between Frost and Chamberlain Roads in Mantua Township, though trail development will hinge upon the acquisition of additional right of way.

Finally, an opportunity has opened up with the Norfolk Southern Railroad's announcement that they have filed for abandonment of 5.5 miles of out-of-service corridor from Mantua Township through Aurora. The Park District is coordinating with the City of Aurora to hopefully acquire the rights to develop a hike and bike trail

-stay tuned! "

Has the City of Aurora, Ohio indicated in writing or by telephone to Norfolk Southern Railway Company it will pay money for its right of way?

8.

EL Erie NY&LE NYP&O C&M Right of Way

Crossing list:

Condition:

Cuyahoga County, Ohio

Solon, Ohio

Cannon Rd.

Underpass

Hawthorn Parkway

Overpass

Out of service

Harper Rd /Cochran Rd.

crossing intact

Old Harper Rd.

Crossing closed roadway abandoned

Miles Rd

Crossing closed roadway abandoned

Solon Rd.	Rubber crossing intact
SOM Center Rd /State Route 91	Overpass bridge built 1973
Liberty Street	Crossing track removed
Flanders	Rubber crossing intact
Church drive	Intact asphalt, no flangeways, railroad gate
Pettibone Rd.	Paved over
Geauga Lake Rd.	Paved over
Squires Rd.	Paved over

Who allowed the City of Solon, Ohio to pave over the Old Harper Road crossing, the Miles Road crossing, the Liberty Street crossing, the Geauga Lake Road crossing, and the Squires Road crossing? Why did the City of Solon not ask the Interstate Commerce Commission or the Surface Transportation Board for authority to remove rail and the panel of rail and ties, preventing rail traffic east to the section of 5.5 miles of tracks sought to be abandoned? When was each pave over or rail tarot done? How much did this pavement work cost within the landlines of the railroad real property?

Comparison to a forthright filing for exemption from abandonment requirements.

There was another way to make application for abandonment. First, it should not have been done as a “quickie abandonment”. It should have been done as a normal abandonment. Second, it should have stated in a forthright manner the shortcomings of operations and marketing by Consolidated Rail Corporation.

“Norfolk Southern Railway Corporation in a division of Conrail with CSX Corporation ended up with a portion of Erie Railroad mainline which had been severed too far west, leaving a large sand quarry stranded with no rail service, depriving Conrail of that revenue. Conrail last tamped and serviced the railroad mainline in June of 1988. Norfolk Southern Corporation did not ever tamp or service this line. Some tie renewal was done in 1948. Conrail last provided service to a customer in 1988. Norfolk Southern Railway Corporation did not participate in any serious co-ordinated effort with the Regional Transit Authority to place passenger trains on the line for Solon residents or Aurora residents, even though passenger service existed until 1977 from Cleveland to Youngstown. Norfolk Southern Railroad Corporation allowed pave overs in Solon, Ohio without seeking authorization from the Surface Transportation Board. Norfolk Southern Railroad Corporation and its operator Cleveland Commercial Railroad Company allowed pave overs and tear outs in Aurora, Ohio without seeking authorization from the Surface Transportation Board. The lease to the Cleveland Commercial Railroad

Company did not require the Norfolk Southern Railway Company to restore the crossings and restore the railroad to operation to serve shippers. No marketing visits were made to past shippers on this line, nor to future shippers on this line. No effort was made to purchase the 1.2 miles of ex-Erie Railway right of way purchased in August 2017 from a private owner, to allow service to the large sand quarry adjacent to the line.

The funds required to rebuild and maintain this line might decrease the amount of executive compensation to the top executives or reduce their bonus, and may reduce pay to the Board of Directors of our publicly traded corporation. Applicant would prefer to sell the right of way and real estate to the Town of Mantua, and the Village of Aurora, and the Portage County Park District. Applicant would also prefer to sell a permanent easement for overhead electric power lines to a well funded large electric utility. Applicant would prefer to keep much of the railroad in Solon, Ohio paved over and out of service, seeking no new customers.”

Track evaluation report

A track evaluation report is provided herewith, since the exemption application did not provide any information on the condition of track and crossings.

7054 Salineville Rd. N.E.
Mechanicstown, Ohio 44651

November 29, 2017

SUBJECT: Track Evaluation Report, Former EL (Conrail, NS Corp.)
Cleveland to Pymatuning Trackage Between MP 22.0 (north of Aurora, Oh.) and MP 27.5 (between Aurora and Mantua, Oh.), a Distance of 5.50 Miles, Proposed for Abandonment Before the Surface
Transportation Board Washington, DC, AB-290 (Sub-No. 394X) and AB-1257 Notice of Exemption.

Dear Sir

Inspection conducted this date, first viewing trackage and right of way, sampled from public roadways, in accordance with 49CFR, Part 213 Track Safety Standards. Beginning at east end of Aurora, the SR 82 public highway crossing, view south and north sampled first and reveals single track line, laid with heavy 115 lb RE rail and 132 lb RE rail in 39'

sections, jointed with heavy 6 bolt flange bars. The public highway crossing, at-grade, has been removed and track panel(s) completely lifted out of the track structure, thus temporarily severing the line as a common carrier through route. Highway crossing warning device at SR 82 east Aurora has been taken down and removed including train approach activation circuits and control. Presumed local highway authority has paved over the lifted rail panel(s) with asphalt. Crosstie condition, at this location appeared to meet FRA Class 1 Track Safety Standard of 10 MPH, but would not meet FRA Class II Track Safety Standard of 25 MPH. Vegetation condition was found defective. Drainage condition was found defective. Surface, alignment and profile, i.e., track geometry was found to meet a FRA Class 1 Track Safety Standard, but not a FRA Class 2 Track Safety Standard. No exception taken to rail and joint bar condition. Trackage was basically tangent and no switches observed. No evidence of recent trackage use, inspections or maintenance for a substantial number of previous years. Right of way width appears to be standard 100' double track EL line reduced to single track line during the Conrail era and temporarily taken out of service during decade of 1990's under Conrail.

Second viewing of trackage and right of way, sampled from public roadway/street, in accordance with 49CFR, Part 213 Track Safety Standards was conducted at south end of Aurora, the SR 82 public highway crossing, view south and north, reveals single track line, laid with heavy 132 lb RE rail in 39' section, jointed with heavy 6 bolt flange bars. The public highway crossing, at-grade, has been removed and track panel(s) completely lifted out of the track structure, thus temporarily severing the line, as a common carrier through route. Highway crossing warning device at SR 82 south Aurora has been taken down and removed including train approach activation circuits and control. Presumed local highway authority has paved over the lifted rail panel(s) with asphalt. Crosstie condition, at this location appeared to not meet FRA Class 1 Track Safety Standard of 10 MPH, as I could not

visualize one (1) single tie in compliance with 49CFR 213.109 within a 300' test section. Vegetation condition was found defective. Drainage condition was found defective. Surface, alignment and profile, i.e., track geometry was found to meet a FRA Class 1 Track Safety Standard, but not a FRA Class 2 Track Safety Standard. No exception taken to rail and joint bar condition. Trackage was basically a combination of tangent and curve track and no switches observed. No evidence of recent trackage use, inspections or maintenance for a substantial number of previous years. Right of way width appears to be standard 100' double track EL line, reduced to single track line during Conrail era and temporarily taken out of service during decade of 1990's under Conrail.

Third viewing of trackage this date, sampled from public roadway, in accordance with 49CFR, Part 213 Track Safety Standards was conducted at Chamberlain Road public highway at-grade crossing located approximately MP 27.2, which is north of Mantua, Oh. and is adjacent former rail customer/user, Cantex plant, which is still in active operation and appeared to be exclusively served by highway common carrier trucking. Viewing south towards Mantua or south towards end of track MP 27.5 and north towards Aurora, Oh., reveals single track line, laid with heavy 132 lb RE rail in 39' section, jointed with heavy 6 bolt flange bars. The public highway crossing, at-grade, has been removed and track panel(s) completely lifted out of the track structure, thus temporarily severing the line, as a common carrier through route. Presumably, local highway authority has paved over the lifted rail panel(s) with asphalt. Crosstie condition, at this location appeared to meet FRA Class 1 Track Safety Standard of 10 MPH. Vegetation condition was found defective. Drainage condition was found defective. Surface, alignment and profile, i.e., track geometry was found to meet a FRA Class 1 Track Safety Standard. No exception taken to rail and joint bar condition. Trackage was basically tangent and no switches observed. No evidence of recent trackage use, inspections or maintenance for a substantial number of previous years. Right of way

width appears to be standard 100' double track EL line, reduced to single track line during Conrail era and temporarily taken out of service during decade of 1990's under Conrail.

Reportedly, between MP 22.00 and MP 27.50, a total of ten (10) public highway crossings at-grade, have had their track panel(s) lifted and crossing surfaces asphalted over along with automatic highway crossing warning devices removed and destroyed. It is estimated that to replace the lifted track panel(s) and restore the crossing surface(s) would cost approximately \$100,000.00 per each crossing. It is also estimated that to replace the removed/destroyed highway crossing warning devices would cost approximately \$250,000.00 per each crossing.

To rehabilitate the 5 1/2 miles of trackage and restore it for minimum FRA Class 1 Track Safety Standard operation at 10 MPH maximum speed, two (2) areas of maintenance must be accomplished, in this order:

- 1 Vegetation remediation: 5 1/2 miles at \$10,000.00 per mile or total price of \$55,000.00
- 2 Safety tie: 5 1/2 miles of track required a tie renewal every 100" and a tie renewal within 27" of centerline of each joint or an estimated 1,000 ties per mile or a total of 5,500 ties at \$80 per tie, installed for total of \$440,000.00

SUMMARY

Restoration, 10 Highway Crossings At-Grade.....	\$ 3,500,000.00
Vegetation remediation.....	\$ 55,000.00
Safety ties.....	\$ 440,000.00
 TOTAL.....	 \$ 3,995,000.00

Summary, I would submit total estimate of Probable Cost is:
.....\$ 3.9 million

A contingency of 3% should also be added for such unforeseen items such as drainage culverts and engineering support.

RESPECTFULLY SUBMITTED

T. D. Barnett

CERTIFIED TRACK INSPECTOR

(Practicing, US DOT FRA Code 49CFR 213 and Ohio Revised Code, As Applicable)

Request to Board and Motion To Stay and Request to Void Ab Initio:

AllAboardOhio respectfully requests this abandonment exemption be rendered void *ab initio*. Using its authority to investigate the state of the American system of railroads it is requested to obtain answers to the questions listed above in this Motion To Stay. These questions should be formally posed to the Township of Mantua, the City of Aurora, Ohio, the Portage County Park District, the Norfolk Southern Railway Company, and the Cleveland Commercial Railway Company.

The Board should once it is satisfied the railroad has had its road crossings obliterated and safety signals, cross bucks and flashers removed, should order the Norfolk Southern Railway Company to restore them for operation by July 30, 2018 so that trains can safely pass to end of track between Chamberlain Road and Frost Road, Mantua, Ohio. Any needed sidings should be restored to connection with a commercial carrier Pantex at Chamberlain Road, Mantua, Ohio. The Board staff should hold weekly telephone conferences with the Norfolk Southern Railway Corporation to discuss the progress of the provision of the requested information and thereafter to supervise the work of railway maintenance of way forces and private sector railroad contractors to restore the line of railroad and all removed crossings to safe and effective movement of trains to Federal Railroad Administration Class II operation which existed on this

line in 1970. A certified arborist should remove and replant all trees growing in between the rails and in the adjacent clearance area.

As part of the voiding of the abandonment exemption, The Board should order that any negotiations between the Norfolk Southern Railway Corporation, the Township of Mantua, the City of Aurora, Ohio, the Portage County Park District, any electric utility companies for sale of the right of way, permanent easements or annual licenses be ended as void and held in abeyance not to resume until June 30, 2021.

The application of the Cleveland Commercial Railway Company for discontinuance of its operating lease be first examined for a financial fitness review to learn its ability to operate the line of railroad once it is restored to operation in July 30, 2018.

The Board should order a study of this line of 5.5 miles of railroad, and its connecting EL Erie NY&LE NYP&O C&M wide Right of Way for its suitability for establishment as a corridor for passenger rail travel between Cleveland, Ohio and Pittsburgh, Pennsylvania.

s/ brendandelay s/

Brendan Delay
20545 Center Ridge Road
Suite 424
Rocky River, Ohio 44116
brendandelay@ameritech.net
440-333-1319 facsimile
440-333-3708 telephone
Attorney for AllAboardOhio

Certificate of Service

A copy of the foregoing has been served by First Class United States Mail and via facsimile at 202-666-7849 to William A. Mullins and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, D.C. 20037 and via First Class United States Mail to Gregg E. Summy, General Solicitor, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510 this 11th day of December 2017.

s/ brendandelay s/

Brendan Delay