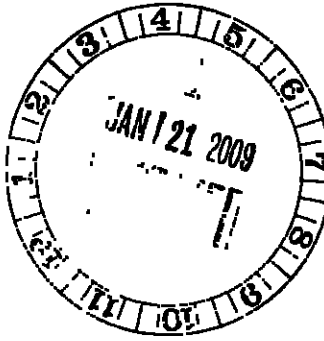


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January 21, 2009

George W. Mayo, Jr.
Partner
(202) 637-5679
gwmayo@hhlaw.com

BY HAND

The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

224387

ENTERED
Office of Proceedings

JAN 21 2009

U.S.
Public Record

Re. STB Docket No. AB-290 (Sub-No. 210X)
Norfolk Southern Railway Company
Abandonment -- in Atlanta, Fulton County, Georgia

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of National Railroad Passenger Corporation's Motion To Supplement Its Earlier-Filed Petition To Intervene in Support of Stay Sought by Georgia Department of Transportation.

If you have any questions or I can be of any assistance, please let me know.

Respectfully,

George W. Mayo, Jr.

cc. All Parties of Record

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-290 (SUB-NO 210X)

NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT -
IN ATLANTA, FULTON COUNTY, GEORGIA



ENTERED
Office of Proceedings
JAN 21 2009
Part of
Public Record

**NATIONAL RAILROAD PASSENGER CORPORATION'S
MOTION TO SUPPLEMENT ITS EARLIER-FILED
PETITION TO INTERVENE IN SUPPORT OF STAY
SOUGHT BY GEORGIA DEPARTMENT OF TRANSPORTATION**

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COUNSEL FOR NATIONAL RAILROAD
PASSENGER CORPORATION

Dated: January 21, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-290 (SUB-NO. 210X)

NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT –
IN ATLANTA, FULTON COUNTY, GEORGIA

**NATIONAL RAILROAD PASSENGER CORPORATION'S
MOTION TO SUPPLEMENT ITS EARLIER-FILED
PETITION TO INTERVENE IN SUPPORT OF STAY
SOUGHT BY GEORGIA DEPARTMENT OF TRANSPORTATION**

The National Railroad Passenger Corporation (“Amtrak”) hereby moves to supplement the petition to intervene in support of the stay sought by the Georgia Department of Transportation (“GDOT”), which Amtrak filed on January 15, 2008.

Amtrak wishes to bring to the Board’s attention that it is today filing a “Notice of Intent To File Application under 49 U.S.C. § 24311 (c) To Condemn Certain Rail Carrier Property and Request for Establishment of Procedural Schedule” (“Notice of Intent To Condemn”). In this submission, Amtrak provides notice of its intent to condemn under 49 U.S.C. § 24311(c) the rail passenger service easement owned by Norfolk Southern Railway Company (“NS”) in regard to a 4 30-mile railroad line between mileposts DF 633 10 and DF 637 40, in Atlanta, Fulton County, Georgia, the line which is the subject of this abandonment proceeding

In light of Amtrak’s filing of its Notice of Intent To Condemn, it is appropriate that the Board stay the abandonment proceeding related to the line which is the subject of that Notice. In

National Railroad Passenger Corp. – Conveyance of Conrail Line in Wayne County, MI, Finance Docket No. 30898, Decision at 1 n.2 (served Oct 6, 1986) (copy appended as Attachment 1), the Board's predecessor held in abeyance a then-ongoing abandonment proceeding related to the line Amtrak proposed to acquire through condemnation. See National Railroad Passenger Corp – Conveyance of Conrail Line in Wayne County, MI, Finance Docket No. 30898, Decision at 1-3 (served Dec. 2, 1986) (further discussing appropriateness of holding abandonment proceeding in abeyance) (copy appended as Attachment 2). Here, the Board should do the same.

Respectfully submitted,



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COUNSEL FOR NATIONAL RAILROAD
PASSENGER CORPORATION

Dated: January 21, 2009

ATTACHMENT 1

EC

INTERSTATE COMMERCE COMMISSION
DECISION

SERVICE DATE

OCT 6 1986

Finance Docket No. 30898

NATIONAL RAILROAD PASSENGER CORPORATION--
CONVEYANCE OF CONRAIL LINE IN WAYNE COUNTY, MI

Decided: September 29, 1986

... On August 20, 1986, the National Railroad Passenger Corporation (Amtrak) petitioned the Commission to institute a proceeding under section 402(d) of the Rail Passenger Service Act (RPSA), 45 U.S.C. 562(d).^{1/} By its petition, Amtrak requests that the Commission order that a line of railroad belonging to the Consolidated Rail Corporation (Conrail) be conveyed to it and that the Commission establish the terms for the sale of the line.^{2/} This decision institutes the requested proceeding.

1/ Section 402(d) provides, in relevant part, as follows:

(d) Disagreement procedures

(1) If the Corporation and railroad are unable to agree upon terms for the sale to the Corporation of property (including interests in property) owned by the railroad and required for intercity rail passenger service, the Corporation may apply to the Commission for an order establishing the need of the Corporation for the property at issue and requiring the conveyance thereof from the railroad to the Corporation on reasonable terms and conditions, including just compensation. Unless the Commission finds that-

(A) conveyance of the property to the Corporation would significantly impair the ability of the railroad to carry out its obligations as a common carrier; and

(B) the obligations of the Corporation to provide modern, efficient, and economical rail passenger service can adequately be met by the acquisition of alternative property (including interests in property) which is available for sale on reasonable terms to the Corporation, or available to the Corporation by the exercise of its authority under section 545(d) of this title,

the need of the Corporation of the property shall be deemed to be established and the Commission shall order the conveyance of the property to the Corporation on such reasonable terms and conditions as it may prescribe, including just compensation.

2/ Amtrak has also sought the postponement of the issuance of a Certificate of abandonment for this line, which is the subject of an abandonment application by Conrail in Docket No. AB-167 (Sub-No. 947N), Conrail Abandonment in Wayne County, MI. By separate decision, that proceeding is being held in abeyance pending the outcome of this proceeding. Additionally, Amtrak has alternatively requested that, if the line is approved for abandonment, the Commission impose on any transferee the same obligations to which Conrail is subject under section 402 of RPSA, including the obligation to make the line available for use by Amtrak pursuant to section 402(a) of RPSA or to convey the line to Amtrak pursuant to section 402(d). Since the section 402(d) proceeding is being instituted, and the abandonment proceeding is being held in abeyance, consideration of Amtrak's alternative request need not be made at this time. Furthermore, in a letter dated September 10, 1986, Amtrak makes it clear that it has elected to invoke the Commission's jurisdiction under section 402(d) of RPSA to acquire ownership of the line from Conrail and not merely the use of the track under section 402(a) or by means of an easement obtained from a potential transferee of the line.

Finance Docket No. 3089d

The subject line consists of a 0.98-mile portion of the line of railroad called the Wall Track, located in Wayne County, MI. It is described as follows:

- (1) The Wall Track from north of the Detroit River Tunnel Main Line tracks beginning at a point at the west side of Bagley (Baker) Street (approximately Milepost 0.0) and extending in an easterly direction to the east side of the former right-of-way at Jefferson Avenue, including the former spur leading to Tenth Street (approximately Milepost 0.56);
- (2) The Wall Track from south of the Detroit River Tunnel Main Line tracks, beginning at a point at the west side of Porter Street (approximately Milepost 0.0) and extending in an easterly direction to the east side of the former right-of-way at Jefferson Avenue (approximately Milepost 0.42).

Amtrak states that it currently operates intercity passenger service to Detroit, MI, and uses the former Michigan Central Depot located at Vernon Highway and Michigan Avenue, approximately 1.5 miles west of downtown Detroit. Under an agreement with the Michigan Department of Transportation, Amtrak plans to relocate its Detroit station operation to a site immediately adjacent to the Joe Louis Arena in downtown Detroit. According to Amtrak, the station relocation project will create a joint intercity and commuter facility constructed and operated in conjunction with the Southeastern Michigan Transportation Authority. Amtrak states that the only rail access to the proposed facility is over the Wall Track in connection with other rights-of-way acquired by the City of Detroit for this project. Amtrak concludes that, if it is unable to obtain the use of the Wall Track or acquire its ownership, relocation of the station to the Joe Louis Arena site for commuter and intercity operations may be foreclosed.

Amtrak states that it has made two written offers to purchase the subject line from Conrail. However, Conrail has accepted neither offer according to Amtrak but, rather, has sought to abandon the rail line. Amtrak therefore considers that Conrail and it have been unable to agree on the terms of sale within the meaning of section 402(d). Thus, in view of the failure of Amtrak and Conrail to agree and the need of Amtrak to use the Wall Track for intercity rail passenger service, Amtrak requests that the Commission institute a proceeding under section 402(d) for an order establishing the need of Amtrak for the Wall Track and requiring its conveyance to Amtrak on reasonable terms and conditions. The requested proceeding will be instituted.

Great Lakes Railway Company (GLRC) filed a petition on September 4, 1986, for leave to intervene in this proceeding. Previously, on August 20, 1986, GLRC made a timely offer of financial assistance pursuant to 45 U.S.C. 748(d) and 49 U.S.C. 10905(d)-(f) to acquire the Wall Track. Since GLRC is competing with Amtrak for the acquisition of this line, it has shown good cause for being allowed to participate as a party to this proceeding and its petition will be granted.

There are currently no Commission regulations to guide the parties in the submission of their evidence. The parties therefore should present all relevant information and supporting documents. Amtrak must also set forth exactly how much of the line and attendant property it believes necessary for the provision of the proposed service.

With respect to evidence regarding compensation and other terms of sale, the parties should be guided by the Commission's decisions establishing terms and conditions for the sale of rail lines under 49 U.S.C. 10905. The parties must fully explain whatever methodologies they use in determining just compensation

Finance Docket No. 30893

for the line and any other terms and conditions of sale. Additionally, Conrail must promptly make available to Amtrak any information relevant to the determination of these matters. Specifically, Conrail must make available to Amtrak, within 10 days from the service date of this decision, its railroad valuation maps covering this line or a better physical description of the line as requested by Amtrak, and sufficient information regarding the third party non-railroad easement along the right-of-way referred to in Exhibit D of its abandonment application to allow Amtrak to evaluate the effect of this easement on the value of the underlying real estate.

Finally, Amtrak has indicated that it would allow continued rail freight service over the line by Conrail. The parties should address whether Amtrak should be required to permit continued rail freight service by Conrail or another rail carrier and how best this might be accomplished, i.e., whether the requirement should be made a term or condition of sale under section 402(1).

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

It is ordered:

1. A proceeding is instituted under section 402(d) of RPSA.
2. GLRC's petition for leave to intervene is granted.
3. This proceeding will be handled under the modified procedure. The parties must comply with the Commission's Rules of Practice, including 49 C.F.R. 1104 and 1112.
4. The schedule for filing verified statements of fact and argument is as follows:

Amtrak's initial statement - November 5, 1986
Conrail's and GLRC's statements - December 3, 1986

Amtrak's reply statement - December 23, 1986

Amtrak must serve its statements on:

Donald A. Brinkworth, Esq. Chandler L. van Orman, Esq.
General Counsel - Litigation Wheeler & Wheeler
Consolidated Rail Corporation 1729 H Street, NW
1138 Penn Center Plaza Suite #200
Philadelphia, PA 19104 Washington, DC 20006

Conrail and GLRC must serve their statements on:

William P. Erkelens, Esq.
General Solicitor
National Railroad Passenger Corporation
400 N. Capitol Street, N.W.
Washington, DC 20001

5. A decision will be issued on or before 120 days after the close of the evidentiary period.

6. Within 10 days from the service date of this decision, Conrail must make available to Amtrak any information relevant to the determination of just compensation for the line and other terms and conditions of sale, as discussed above.

JAN.16.2009

6:10PM

AMTRAK CORPORATION

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P.22

Finance Desk: No. 30898

7. Except for good cause shown, preliminary motions and requests for cross examination of witnesses or for other relief will not be acted on prior to the date that all verified statements are due.

8. This decision is effective 3 days from the date of service.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Andre concurred in the result.

(SEAL)

Norata R. McGee
Secretary

ATTACHMENT 2

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 30293

SERVICE DATE

DEC 2 1986

NATIONAL RAILROAD PASSENGER CORPORATION -- CONVEYANCE OF CONRAIL
LINE IN WAYNE COUNTY, MI

Decided November 26, 1986

The Consolidated Rail Corporation (Conrail) has filed a petition pursuant to 49 C.F.R. 1117.1 to stay the procedure schedule established in this proceeding by decision served October 5, 1986, and effective October 9, 1986, pending judicial review of the Commission's decision in AB-167 (Sub-No. 9474), Conrail Abandonment in Wayne County, MI (not printed), served October 5, 1986.

BACKGROUND

The National Railroad Passenger Corporation (Amtrak) currently operates intercity passenger service to Detroit, MI, using the former Michigan Central Depot^{1/} located approximately 1.5 miles west of downtown Detroit. Under an agreement with the Michigan Department of Transportation (MDOT), Amtrak plans to relocate its Detroit station operation to a site immediately adjacent to the Joe Louis Arena in downtown Detroit. The station relocation project will create a joint intercity and commuter facility constructed and operated in conjunction with the Southeastern Michigan Transportation Authority (SEMTA). This project is based on plans initiated nearly a decade ago and is strongly supported by the City of Detroit since it creates the opportunity for commuter rail service to the central business district.^{2/}

A critical and necessary rail link in the provision of the proposed service is an approximately 0.98-mile line of railroad owned by Conrail known as the Wall Track. It is essential since the only rail access to the proposed facility requires movement over that line. On October 11, 1985, Conrail filed a Notice of Insufficient Revenues for the Wall Track. By letter dated November 1, 1985, Amtrak formally advised Conrail in writing that Amtrak required the use of the subject line in connection with the relocation of Amtrak's Detroit station. However, on December 10, 1985, Conrail entered into an agreement with Kaybee Corporation (Kaybee) to sell the Wall Track to Kaybee for \$300,000, conditioned upon Conrail first abandoning the line. Kaybee also contracted to purchase, and has since purchased, several parcels of land owned by Conrail that adjoin the Wall Track but which apparently contained no active rail lines, and were obtained solely for redevelopment purposes.^{3/} Conrail proceeded to file an application on May 23, 1986, under section 308 of the Regional Rail Reorganization Act of 1973,^{4/} to abandon the Wall Track and that proceeding was docketed as AB-167 (Sub-No. 9474). Subsequently, Amtrak made offers to purchase the

^{1/} Kaybee Corporation (Kaybee) now owns and is engaged in the redevelopment of the Michigan Central Depot.

^{2/} For example, the City has already built a major structure with two-story bays several hundred feet long to receive trains providing the proposed service.

^{3/} Kaybee is not authorized by its Articles of Incorporation to conduct railroad operations.

^{4/} This section was added by the Northeast Rail Service Act of 1981 (NEFSA), Pub. L. No. 97-15.

subject line in letters dated June 4 and August 12, 1986, but Conrail refused to negotiate with GLRC.

On August 20, 1986, Great Lakes Railway Company (GLRC) made a timely offer of financial assistance pursuant to 49 U.S.C. 738(d) and 49 U.S.C. 7305(d)-(f) to acquire the Wall Track. GLRC is a wholly-owned subsidiary corporation of Kable created specifically to acquire the Wall Track and to conduct rail operations over it. GLRC has offered to provide continued rail freight service on the line on an as-needed basis, but at the time the offer was made, it owned no equipment and was not engaged in the provision of any other rail service. GLRC has offered a lower price of \$21,215 for the Wall Track as a rail property. GLRC has also indicated its willingness to negotiate an easement with Amtrak in order that Amtrak may provide passenger service over the subject line.

Also on August 20, 1986, Amtrak filed a petition with the Commission stating that it has made an offer of financial assistance for the line within the meaning of 49 U.S.C. 736 and requesting that the Commission postpone the issuance of a certificate of abandonment for the subject line. If the Commission does not postpone the issuance of the abandonment certificate, Amtrak has alternatively requested that the Commission condition the issuance of the certificate in a manner to protect Amtrak's statutory rights to use the Wall Track under section 402 of the Rail Passenger Service Act (RPSA), 45 U.S.C. 552.

Concurrently, Amtrak also petitioned the Commission to institute a proceeding under section 402(d) of RPSA for the conveyance of the Wall Track to it by Conrail and for the establishment by the Commission pursuant to that statute of the terms for the sale of the line. Similarly, Amtrak again requested in this petition that, if abandonment of the line is not postponed, that the Commission impose on any transferee the same obligations that Conrail is subject to under section 402 of RPSA, including the obligation to make the line available for use by Amtrak under section 402(a) of RPSA or to convey the line to Amtrak pursuant to section 402(d). However, in a letter dated September 10, 1986, Amtrak clarified its position by specifically electing to invoke the Commission's jurisdiction under section 402(d) of RPSA to acquire ownership of the line from Conrail and not merely the use of the track under section 402(a) or to, in case of an easement obtained from a potential transferee of the line. Finally, Amtrak has indicated that it would allow continued rail freight service over the line by Conrail or other responsible persons desiring to provide such service.

By decision served October 6, 1986, and effective October 2, 1986, the Commission instituted a proceeding pursuant to section 402(d) for the conveyance of the Wall Track by Conrail to Amtrak, and granted GLRC's petition for leave to intervene in the proceeding. The proceeding was set for modified procedure, and a procedural schedule was established for the submission of evidence and argument. Under the schedule, Amtrak's initial statement was due November 3, 1986, Conrail's and GLRC's statements were due December 3, 1986, and Amtrak's reply statement was due December 23, 1986. It is this procedural schedule that Conrail wants stayed. Additionally, the Commission ordered Conrail to make available to Amtrak certain relevant information and ordered that a final decision be issued in this proceeding on or before 120 days after the close of the evidentiary record.

Concurrently, by decision served October 6, 1986, and effective October 9, 1986, in Docket No. AB-157 (Sub-No. 54-N), Conrail Abandonment in Wayne County, MI, the Commission also ruled the abandonment proceeding involving the Wall Track is abeyance until otherwise ordered, pending a final determination in the section 402(d) proceeding here. The Commission further ordered that Conrail may now discontinue freight service over the Wall

Track 3/ Conrail has appealed this decision to the Special Court 4/

On November 4, 1986, the Director of the Office of Proceedings orally granted an extension of time for filing pleadings in Finance Docket No. 30898 at the request of Amtrak and with the concurrence of Conrail. Pursuant to that extension the filing dates became November 21, 1986 for Amtrak's initial statement, December 19, 1986 for Conrail's and OLRC's statements, and December 29, 1986 for Amtrak's reply statement. This extension was granted because the parties indicated that they were attempting to resolve their differences which would meet the proceeding in Finance Docket No. 30898. Subsequently, by letter dated November 30, 1986, Amtrak requested a further extension for filing its initial statement due to the unexpected failure of the parties to reach an agreement by that date and due to the absence of Amtrak's witness in the case. Conrail also sought a specified extension apparently as a result of Amtrak's request. Neither party objected to the other's request. On November 21, 1986, the Director of the Office of Proceedings orally granted these requests. The filing dates now are November 26, 1986 for Amtrak's initial statement, January 7, 1987 for Conrail's and OLRC's statements, and January 19, 1987 for Amtrak's reply statement.

DISCUSSION AND CONCLUSIONS

To justify a stay pending judicial review, a petitioner must show that it will suffer irreparable harm absent a stay, that the petitioner will likely prevail on the merits, that a stay is in the public interest, *Virginia Petroleum Jobbers Ass'n v. PFC*, 253 F.2d 921 (D.C. Cir. 1959), *Washington Metropolitan Area Transit Comm. v. Holiday Inns, Inc.*, 559 F.2d 941 (D.C. Cir. 1977). Conrail has not made that showing here.

Irreparable harm The threshold consideration in deciding whether injunctive relief is appropriate is whether the petitioning party will be irreparably harmed without it. *Samuelson v. Murray*, 415 U.S. 51, 55 (1974). Otherwise, interim relief is not needed.

There are several well-settled principles for guidance in determining whether irreparable harm has been shown. First, the injury must be both certain and great. It cannot be theoretical, but must be actual. Injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time. *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1930); the movant must show that "the injury complained of [is] of such imminence that there is a 'clear and present need' for equitable relief to prevent irreparable harm." *Ashland Oil, Inc. v. PFC*, 409 F.Supp. 297, 307 (D.C. Cir. 1976), *aff'd* 548 F.2d 377 (D.C. Cir. 1976). (Citations and internal quotations omitted). Finally, injuries in terms of money, time and energy necessarily expended in the absence of a stay are not enough, and the possibility that adequate compensatory or other corrective relief will be available at a later date weighs heavily against a claim of irreparable harm. See *Virginia Petroleum Jobbers Ass'n v. PFC*, *supra*, at 925. Here, Conrail has failed to show it would be irreparably injured absent a stay.

Essentially, Conrail advances two arguments of how it will be harmed absent a stay. First, Conrail argues that, if the section 402(d) proceeding is adjudicated before the Special Court

3/ By letter dated October 9, 1986, as supplemented by letter dated October 17, 1986, Boag Cold Storage Warehouse, Inc. (Boag) petitioned for reconsideration of that portion of the Commissioner's decision allowing Conrail to discontinue freight service over the subject line. By separate decision in that proceeding, the Commissioner is denying Boag's petition.

4/ The Special Court, National Rail Reorganization Act of 1970, created by 45 U.S.C. 7.3

reaches a decision on its appeal of the Commission's decision holding the abandonment proceeding in abeyance, the legal issues raised in this case may be mooted and Conrail may be denied the right to adjudicate them. Such an argument is speculative at best and clearly does not constitute immediate and irreparable harm.

It is doubtful that the mere mooting of legal issues could ever constitute irreparable harm. However, here it is clear that it would not. Congress enacted the IPSTA in 1977 and this is the first instance where Amtrak has used the Commission's powers under section 402(d) to acquire a line of railroad necessary for intercity passenger service. In contrast, the Commission has granted without delay some 1,000 abandonment applications by Conrail under 49USA. Thus, the need for judicial review of the resolution of the conflicting statutes for future application is essentially non-existent.

Second, Conrail asserts that it will be harmed by having to participate in the section 402(d) proceeding which may itself become moot if Conrail is successful in its appeal. Requiring a party to participate in an agency proceeding does not constitute irreparable harm. Reorganization Bd. v. Bannerkraft Clothing Co., Inc., 415 U.S. 1, 24 L.W.2d 1. Even if a price is set by the Commission in that proceeding, there has been no showing that Conrail would receive less compensation under section 402(d) than it would otherwise for the sale of the line. Even if a sale to Amtrak were set aside by the court, and we think there is little chance that it will be, Conrail can easily be made whole for any damage that it suffers.

Finally, section 402(d) provides for expedited proceedings which would be shortened or possibly terminated if the parties should agree on a price for the line or otherwise settle their dispute. In any event, the Commission will promptly resolve the section 402(d) proceeding to avoid subjecting Conrail to any unwarranted delay. Moreover, one of the primary interests that 49USA protects is the speedy abandonment of unprofitable lines by Conrail. Here, granting a stay will in all probability result in an even slower disposition of this matter and therefore would not be in the public interest.

Likelihood of prevailing on the merits. Conrail fails to address directly this criterion in its petition for a stay and otherwise has not made a strong showing that it is likely to prevail on judicial review. Here, the Commission was faced for the first time with the unusual situation of the interaction between two conflicting statutes. The Commission was obliged to resolve this conflict and did so in a reasonable manner.

Under section 402(j) Amtrak has the right to acquire any line of railroad, with certain exceptions not relevant here, for the provision of intercity passenger service. Pursuant to IPSTA, Conrail has the right to abandon any revenue deficient line of railroad unless a timely offer of financial assistance is filed under section 10905 of the Interstate Commerce Act for the continuation of rail service. As Conrail points out, Amtrak's offer is for the establishment of passenger service over a line formerly providing freight service. This is a purpose that may not be contemplated by section 10905 and therefore may not protect Amtrak's right to acquire the line.

Furthermore, GLRC's competing offer does not guarantee that the line will remain in rail service and continue to be subject to the Commission's jurisdiction and Amtrak's right of acquisition under section 402(d). This is true because an offer of financial assistance under section 10905 is not binding on the offeror. Thus, if the Commission were to allow the pending abandonment proceeding to be completed prior to the section 402(d) proceeding, GLRC might not go through with the purchase and the line could cease to be a line of railroad subject to our jurisdiction. If that were the case, Amtrak's statutory right to acquire the line could be defeated. Considering that a stay

initially offered to purchase the line conditioned on prior abandonment and that it apparently still wants to acquire the line through its subsidiary primarily to redevelop the underlying real estate. It is certainly reasonable to conclude that such a result would indeed be likely. Moreover, by allowing the abandonment proceeding to continue, GLRC would be able to acquire the subject line and Amtrak would be forced to deal with a developer, as opposed to a railroad company (one here seeking to station service) as contemplated by 49PSA, which could well make the determination of Amtrak's intent in acquiring the line and providing the proposed service unnecessarily difficult and more expensive. Therefore, the Commission properly concluded that holding the abandonment proceeding in abeyance was well justified to protect Amtrak's interest in this matter and is consistent with the Congressional mandate that Amtrak be allowed to acquire rail lines necessary for the provision of intercity rail passenger service.

In reaching its decision, the Commission also considered the unique factual situation presented here. In particular, the Commission noted that the State of Michigan, the City of Detroit, and Amtrak have been parring the subject relocation for the past decade. Amtrak's various requests are all based on its need to provide the proposed passenger service, and it has offered to provide an easement for continued freight service, if needed. On the other hand, Conrail's abandonment of this line could lead to the cessation of service over this line for purposes of redeveloping the underlying real estate.

Furthermore, the area of statutory conflict presented here is quite limited. Specifically, the Commission's decision affects (1) Conrail's ability rapidly to abandon service; and (2) its ability to sell the line to the party it obviously wishes to deal with. As previously discussed, this is the first instance in sixteen years that Amtrak will have had to resort to the provisions of section 402(d) to acquire a line of railroad necessary for the provision of intercity passenger service. In contrast, the Commission has processed without delay some 1,100 abandonment applications filed by Conrail under NERPA. Moreover, the Commission has attempted to give as much effect to NERPA as practicable in this situation by allowing Conrail to cease its operations over the line now. The Commission specifically acknowledged Conrail's right to abandon the subject line and stated that its holding the proceeding in abeyance merely affected the timing of the exercise of that right.

In conclusion, Conrail has failed to demonstrate that the Commission erred in holding the abandonment proceeding in abeyance pending completion of the section 402(d) proceeding.

Public Interest and Harm to Other Parties Contrary to Conrail's speculation, Amtrak would clearly be hurt by a stay of the procedural schedule pending completion of judicial review. Despite Conrail's conjecture otherwise, Amtrak has established unequivocally that it wants to proceed under section 402(d) to acquire the Wall Track. Section 402(d) provides for expedited proceedings. The delay of what amounts to an indeterminable period of time would certainly be contrary to this Congressional mandate under both NERPA and 49PSA. As stated previously, the Commission intends to resolve the section 402(d) proceeding as quickly as practicable, but entry of the stay would prevent that action. Moreover, Amtrak's right to purchase the Wall Track from Conrail could be impaired or lost if the section 402(d) proceeding is not completed prior to abandonment of the line.

7. Kaybee has created a paper entity, GLRC, to acquire the line and attendant real estate under section 4905. GLRC indicated at the time of its offer that no traffic was moving over the line and had been in the recent past, but that it would provide service on an as-needed basis for any future traffic.

Conversely, Conrail's contentions of harm to it and other parties if the procedural schedule is not stayed are unconvincing. The potential harm to Conrail has been discussed, supra, and it is unclear how staying the procedural schedule in the section 402(d) proceeding would be of any reasonable benefit to the shipper located on the subject line.^{8/} Even if the line is purchased by TLPC under section 13905, it would be subject to immediate sale to Amtrak under section 402(d). Thus, any service that might be provided to the shipper in the interim by TLPC would be short lived. Conrail apparently has agreed to continue to provide service until this conflict is resolved under the circumstances, it appears that going forward with the section 13905 procedures would not ultimately benefit the shipper and would be a useless exercise.

On balance, the public interest requires rejection of Conrail's stay request. Amtrak seeks to purchase the subject line to implement a decade-old plan to provide intercity passenger and commuter service to downtown Detroit. Amtrak has indicated that it will grant an easement over the line for the future provision of freight service, if needed, and will maintain the line itself. Amtrak's purchase will also result in Conrail's abandonment of the line. Amtrak has exercised its statutory right to have a proceeding instituted under section 402(d) for the acquisition of the subject line necessary for this proposed service, and that statute provides for expedited decisionmaking by the Commission. A grant of a stay pending judicial review would not only be in direct contravention of this express statutory purpose but also that of NERSA which provides expedited procedures for Conrail in abandoning unprofitable rail lines. Finally, Amtrak is supported in this matter by MDT and the City of Detroit, a strong indication that timely completion of the section 402(d) proceeding is in the public interest.

In view of the above discussion, it would not be in the public interest to grant a stay.

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

It is ordered

1. The petition for stay is denied.

2. This decision is effective on the date served

By the Commission, Heather J. Gradison, Chairman.

Horeta R. McGee
Secretary

(SEAL)

^{8/} The Commission has allowed Conrail to discontinue service over the line in AB-167 (Sub-No. 947N), which is an entirely separate proceeding. Furthermore, the Commission did not require Conrail to discontinue service, but merely permitted Conrail to take such action.

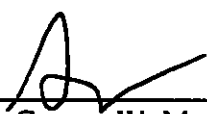
CERTIFICATE OF SERVICE

I hereby certify this 21ST day of January, 2009, that I have caused the foregoing National Railroad Passenger Corporation's Motion To Supplement Its Earlier-Filed Petition To Intervene in Support of Stay Sought by Georgia Department of Transportation to be served as indicated below on the following counsel of record for the parties:

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