

Converting About-To-Be-Abandoned Railroad Rights-of-Way to Recreational Trails

by Charles H. Montange



A comprehensive discussion of how railroad rights-of-way may be converted to recreational trails under the Interstate Commerce Commission's new regulations implementing Section 8(d) of the Trails Act.

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Trails are one of our most significant outdoor recreational resources. They are multipurpose in nature, not only useful but also integral to a host of outdoor activities, including hiking, biking, horseback riding, cross-country skiing, and general exercise. They provide access to areas suitable for hunting, fishing, and camping. They facilitate the kind of low concentration, dispersed type of recreation that is much sought after today. It is accordingly hardly surprising that the National Trails System Act ("Trails Act") states a broad national policy in favor of fostering our national trails system. In particular, the Trails Act calls for the establishment of new trails "primarily near the urban areas of the Nation" in order to conveniently meet the increasing recreational needs of our expanding population and secondarily . . . within scenic areas and along historic travel routes of the Nation" in order to pre-

serve and to utilize more remotely located outdoor areas and historic resources.¹

Railroad Rights-of-Way as Trails

Railroad rights-of-way ("ROW") make excellent trails. They are ideally situated to meet the goals of the Trails Act and, accordingly, the recreational needs of the Nation. Conversion of ROW into trails serves another valuable purpose totally apart from providing additional recreational resources; namely, the conservation of transportation corridors for future use, including future rail use.

The magnitude of this potential trails resource is a function of the size of our built rail system and its rate of abandonment. The United States railroad system initially comprised some 257,000 miles of right-of-way. This system is being abandoned at a rate of 2,000 to 3,000 miles per year. Studies acknowledge that about one-third of these miles—some 600 to 1,000 miles per year—would be desirable for "alternate uses" and, indeed, that the rights-of-way in question "constitute unique resources which cannot be replaced if lost, particularly in urban settings."²

The importance of railroad ROW has not gone unrecognized in the Trails Act. To the contrary, that statute has long provided that the Interstate Commerce

Commission (ICC), which regulates railroads, must cooperate with the Secretary of Interior "in order to insure, to the extent practicable, that any [about-to-be-abandoned ROW] having values suitable for trail purposes may be available for such use."³

Problems in Achieving Rails-to-Trails Conversions

Unfortunately, in most instances, efforts to convert a railroad ROW to trail use are begun only after railroad use of the ROW has been abandoned. At that stage, ICC jurisdiction has ceased and disposition of the right-of-way is generally controlled exclusively by state law, and by local politics.⁴ Under the law of many states, a railroad ROW controlled by a railroad through a railroad easement reverts to the adjacent landowner upon abandonment of rail use, notwithstanding possible public trail use.⁵ Accordingly, after abandonment the linear integrity of many, if not most, rights-of-way is lost, with adjacent landowners claiming various parcels through reversion or otherwise. Local agencies frequently lack the power of eminent domain to reconstitute the right-of-way for recreational use, or the political will to do so.

In those instances in which attempts have been made to invoke ICC assistance to achieve a trail's conversion, frustration has been the result. The "cooperation" from the ICC envisioned for trails purposes has generally been viewed as a failure. The National Park Service, for example, has charged that the Commission's performance in this area has been "dismal."⁶

Two key problems can be identified. The first is lack of notice and the second is the Commission's hesitance to provide vigorous remedies.

Lack of Notice

The first problem faced by a state or local agency, or a private organization, which is interested in employing whatever tools are available at the ICC for the purpose of obtaining a railroad right-of-way for public use is to find out that an abandonment proceeding is underway in enough time to meaningfully participate. This is no easy task. Approximately one-third of rail abandonments are so-called "exemp" abandonments. These exempt abandonments come in two basic varieties; petitioned

exemptions and notice exemptions. Petitioned exemptions are ad hoc in nature. Noticed exemptions proceed in accordance with special provisions outlined in ICC regulations. Particularly with respect to the latter, the public (including especially advocates of public use gets no notice of the abandonment until it has been granted. The only remedy then available is to petition to reopen the proceeding within only 20 days for the purpose of imposing public use conditions. Twenty days is frequently totally inadequate for a state or local agency to obtain the authorizations and commitments necessary, much less to prepare and to file the pleading required, to invoke ICC assistance in fostering a trail conversion.⁷

Even in "regular" abandonment proceedings, the notice afforded potential trail use proponents is haphazard. The first inkling that a ROW may be abandoned is its inclusion in the railroad's "system diagram map" as a "Category 1" line. This is supposed to be done at least four months prior to abandonment, with notice served on certain specified state agencies and officials, and a notice (in the form of a map and description) published in a newspaper of general circulation in each county traversed by the line. At least 15 but no more than 30 days before the abandonment application is filed, the railroad must serve the ICC with a "notice of intent" and publish it at least once a week for three weeks in a newspaper of general circulation, again in each county traversed by the line. Unfortunately, ICC in 1984 stopped its practice of informally advising known proponents of public use of notices of intent.

No general notice of the actual abandonment application is provided, although it must be served on certain specified state agencies. Copies of the application generally may be obtained only by writing the railroad, or conceivably from the Commission.

Once an application is filed, a trails proponent, under ICC's rules, has exactly 30 days to find out about it, obtain a copy, ascertain what must be done and how to do it, obtain necessary clearances and authorizations, prepare a response, and mail or otherwise deliver it so that it is actually received by the agency. Again, this does not afford

much time, particularly to an interested state or local agency, and especially in light of ICC's insistence that comments relating to public use conditions strictly comply with service requirements and make certain required showings or statements on pain of summary rejection.⁸

Remedies Before the ICC

Assuming that the proponent of trails use receives notice, can act in time, and meets ICC's pleading requirements, the next question is what can it hope to achieve. Again, unfortunately, there is more confusion than answer to this question.

The ICC enjoys broad general powers, flowing from its authority to regulate rail abandonments in the public interest, to foster rail-to-trail conversions. A key ICC decision in this regard is *Burlington Northern, Inc.—Abandonment Between Fremont and Kenmore, King County, Washington*.⁹ In that case, trails advocates requested that the Commission impose conditions upon an abandonment in order to secure a ROW for public trail use. Although the Commission took the position that it could not

Reed v. Meserve.¹⁰ The Court there held that ICC could validly condition an abandonment so as to give preference to a purchaser who would keep the right-of-way intact for public use—in that case as a scenic railroad. The First Circuit's rationale merits repeating:

"[E]ven a tiny scenic railroad might be thought to contribute much more to such [national transportation] objectives than uses that would require the tracks and right-of-way to be destroyed. To assemble a right-of-way in our increasingly populous nation is no longer simple. A scarcity of funds and the adverse consequences of too many motor vehicles suggest that society may someday have need either for railroads or for the rights of way over which they have been built. A federal agency charged with designing part of our transportation policy does not overstep its authority when it prudently undertakes to minimize the destruction of available transportation corridors painstakingly created over several generations."

The result reached in ICC's *King County* case was codified in Section



Urban rail-trails are useful not only for recreation but also as bicycle and pedestrian commuter facilities.

order a transfer for trail use without compensation, it did enter an order in essence barring disposition for purposes other than public use for 180 days and further provided a mechanism to set the amount of compensation—namely, binding arbitration if negotiations did not produce a purchase agreement in 90 days.

The Commission's inherent power to compel a transfer for public use was further confirmed by the United States Court of Appeals for the First Circuit in

809(c) of the Railroad Revitalization and regulatory Reform Act of 1976 ("4R Act").¹¹ This provision authorizes ICC, upon request, to enter an order barring a railroad from disposing of a ROW for other than public use for up to 180 days unless the ROW is offered for such use on "reasonable terms." ICC nevertheless concluded in *Chicago and Northwestern Transp. Co.—Abandonment Between Clintonville and Eland, Wisconsin*, that it lacked power to require a carrier to sell its ROW for public pur-

poses.¹² This decision, which draws no support from the legislative history and renders largely nugatory the language about "reasonable terms" in the statute, flies in the face of the Commission's own action in *King County* and certainly ignores the rationale of *Reed v. Meserve*. Although the correctness of ICC's current view of Section 809(c) of the Act is thus very much debatable, the bottom line is not: all a trails advocate can currently expect from the Commission under Section 809(c) is an order barring disposition of the ROW for other than public use for, at most, 180 days. The Commission, under its current view, cannot be relied upon to compel a public use transfer under the provision, either with or without reasonable compensation.

This leaves two major problems for trails advocates. First, although many railroads have done their utmost to cooperate with potential public uses, some have, for whatever reason, been unwilling to sell the ROW for public use for a reasonable sum. Potential public users have thus been thwarted in attempts to obtain the ROW. Second, whatever ICC's attitude with respect to facilitating rail-to-trail conversions, the agency's authority clearly ends upon authorization of abandonment. Once abandonment is effectively authorized, the question of whether the railroad ROW was abandoned and the consequent disposition of the ROW is, with the exception of federal right-of-way grants subject to 43 U.S.C. §912, a matter of state law. Much railroad ROW is held in the form of railroad easements which upon abandonment revert to adjacent property owners under state law. Once reversion occurs, the linearity of the ROW is lost and the problems associated with re-assembling the ROW frequently become insurmountable.¹³

These problems have not gone unnoticed. A key legislative response to date is manifest in Section 8(d) of the Trails Act,¹⁴ added to the books by amendment in 1983. ICC, after prolonged delay, is now in the process of implementing that new provision. ICC's interpretation of Section 8(d) has turned out to be controversial.

Section 8(d) and the Commission

Section 8(d) of the Trails Act has three operative sentences, each of which

is directed at a different problem. The first sentence reiterates the obligation of the ICC to cooperate with the Interior Department and the Transportation Department to encourage state and local agencies and private interests "to establish appropriate trails . . ." the second sentence preempts state property law providing for reversion of railroad ROW to adjacent property owners when the ROW is employed for trail use but "is subject to restoration or reconstruction for railroad purposes." The final sentence provides that if a public agency or private organization agrees to assume "full responsibility" for management, legal liability and taxes relating to use of the right-of-way as a trail subject to possible future rail use, then the Commission "shall not permit abandonment or discontinuance inconsistent or disruptive of such use."



Railroad rights-of-way frequently contain structures such as tunnels of no salvage value to the railroad but considerable value for trail and historical preservation purposes.

ICC's response to Section 8(d) was initially slow. In several individual cases where the provision was invoked, the Commission granted abandonments subject to possible future imposition of conditions once it issued regulations to implement the provision. The agency did not propose implementing regulations until February of 1985. The regulatory proposal posed three significant issues.

The first major issue involves the applicability of Section 8(d) to Conrail abandonments under the Northeast Rail Service Act of 1981 ("NERSA"). In its proposed regulations, ICC construed Section 8(d) to be inapplicable to these abandonments. However, nothing in

Section 8(d) makes it inapplicable to Conrail; ICC inferred an exemption from the fact that Conrail abandonments are not covered by Section 809(c). In its final sentence regulations,¹⁵ the Commission reversed itself, holding that Conrail abandonments are covered by Section 8(d). This is a major development, for otherwise ICC could afford no relief to proponents of public trail use of ROW for much of the Northeast—a heavily urbanized area which the Trails Act suggests should be a prime area for trail development. The Commission decision in favor of covering Conrail with Section 8(d) was a 4 to 3 vote. Two of the Commissioners voting in favor of coverage have left, and Conrail has now petitioned ICC to reconsider.

The second major issue, which also reflects a Commission reversal, involves whether Section 8(d) is, or is not, mandatory. The third sentence of the new provision states that if a trails advocate agrees to assume managerial, legal, and tax responsibility for interim trail use, the Commission "shall not" take action contrary to that use. "Shall" when used in a statute is ordinarily mandatory.¹⁶ If it is treated as mandatory in the context of Section 8(d), the statute on its face requires the Commission to compel a transfer whenever a public agency or private organization agrees to assume the stated responsibilities. ICC in its proposed Section 8(d) regulations initially appeared to so construe the provision. However, in its final regulations, the Commission, upon the urging of the Association of American Railroads and the Department of Transportation, reversed itself, making Section 8(d) applicable only upon the voluntary consent of the railroad. Although many railroads may be willing to negotiate Section 8(d) agreements (and at least one has already done so), ICC's construction permits railroads to refuse to consent to application of Section 8(d) for arbitrary reasons even if they are offered reasonable compensation. ICC's position is, however, difficult to square with the general purpose of Section 8(d) of fostering rail-to-trail conversions. Not surprisingly, several parties, including the State of Washington, the National Wildlife Federation, and the Rails-to-Trails Conservancy have petitioned for review of ICC's construction, arguing in essence that the Commission

lacks discretion to apply Section 8(d) only at the pleasure of the railroad. The Washington suit also involves a refusal by Burlington Northern to negotiate a Section 8(d) agreement with respect to a specific ROW.

There is a subsidiary question which arises if, contrary to ICC'S current construction, Section 8(d) is construed to be mandatorily applicable if invoked by a party agreeable to assuming the responsibilities of interim trail use. That question is whether the trail manager not only must assume all future costs of the ROW pending rail reactivation but also must compensate the railroad. Section 8(d) on its face calls for a transfer upon the assumption of future costs. There are two basic instances for its application. The first involves ROW held by the railroad by easement. Since the railroad easements in question ordinarily disappear upon abandonment, it is difficult to argue that a railroad should be compensated for such easements in order to apply Section 8(d). The second case involves ROW held in fee. But even here, Section 8(d) may be viewed as reasonable regulation and not a taking meriting compensation. The provision is basically a rail banking statute providing for the preservation of ROW without out-of-pocket cost to the railroad through the means of interim trail use, generally by



Conversion of right-of-way to trail use may enhance the value of adjacent property for commercial or residential use.

state and local recreation authorities. In this light, it may be viewed as an instance of federal rail regulatory policy and not a taking warranting compensation. In any event, if in specific instances the application of Section 8(d) without compensation is a taking, the remedy under the Supreme Court's de-

cision in the *Regional Rail Reorganization Cases*¹⁷ would be a suit by the aggrieved party under the Tucker Act¹⁸ for compensation.

The third major issue posed by the Commission's regulations is the impact of Section 8(d) on reversions of railroad ROW to adjacent property owners under state law. On this issue, ICC's position is consistent and clear. In both its proposed regulations and its final pronouncement, the Commission has indicated that if Section 8(d) is applied and if the ROW is in fact devoted to interim trail use, state law providing for reversions to adjacent property owners is preempted. This position was similarly reiterated in the Commission's decision in *Chicago and North Western Transportation Company—Abandonment Exemption—Between Maple River and Ida Grove, Iowa*.¹⁹ the Commission's first actual application of Section 8(d). The Commission there rejected the request of adjacent property owners to allow the ROW in question to revert to them. "In enacting the Trails Act," the ICC said,

"Congress intended to remove reversion as an obstacle to keeping rail rights-of-way intact. Allowing the right-of-way to revert instead of permitting trail use to occur after the requirements of the Trails Act have been met would subvert the congressional purposes for enacting this legislation: namely, to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation."

Nevertheless, a group from the Seattle, Washington area has petitioned for review in the D.C. Circuit of the Commission's new regulations contending that they constitute a taking of reversionary interests without just compensation in contravention of the Constitution.

Pleading Section 8(d) and the Effects Thereof

Having indicated some of the major issues surrounding the Commission's new regulations, it is appropriate to summarize precisely how they operate. Basically, they provide that a state or local agency, or qualified private organization, interested in invoking Section

ICC Approved "Regulated" Abandonments (Excludes Exempt, Bankrupt, and Conrail Abandonments)

State	Miles
Alabama	676.38
Arizona	123.89
Alaska	264.93
California	818.88
Colorado	155.86
Connecticut	2.60
Delaware	23.86
Florida	915.90
Georgia	378.31
Idaho	371.03
Illinois	2,422.91
Indiana	1,085.49
Iowa	2,018.96
Kansas	493.21
Kentucky	617.34
Louisiana	646.46
Massachusetts	70.20
Maryland	89.59
Maine	306.40
Michigan	1,436.23
Minnesota	1,750.16
Missouri	1,319.31
Montana	657.90
North Carolina	725.67
North Dakota	368.92
Nebraska	979.29
New Hampshire	114.81
New Jersey	317.33
New Mexico	55.07
Nevada	115.03
New York	553.65
Ohio	1,478.54
Oklahoma	615.69
Oregon	312.95
Pennsylvania	1,461.33
Rhode Island	5.10
South Carolina	420.30
South Dakota	1,930.54
Tennessee	585.41
Texas	993.49
Utah	218.49
Virginia	239.13
Vermont	226.70
Washington	806.28
Wisconsin	1,333.88
West Virginia	428.72
Wyoming	73.04
TOTALS:	31,852.39

Source: RTC from ICC publications, 1971-Feb. 1986.

8(d) may file a comment (or in an exempt proceeding, petition to be allowed to do so), indicating a desire to invoke the provision. The Commission's prescribed form for doing so is set forth in the margin. The form must be

filed within the 30-day protest and comment period in regular abandonment proceedings and within 10 days after a Notice of Exemption is published in the Federal Register in exempt abandonments. In Conrail abandonments,

the statement must be filed within 60 days after the date that Conrail's application is received.

In all proceedings in which Section 8(d) is invoked, the Commission intends to issue a Notice of Findings. A railroad must inform the Commission within 10 days of such an issuance whether it intends to negotiate a voluntary Section 8(d) agreement with the trails advocate. If the railroad is unwilling, then the Commission will not apply Section 8(d). If the railroad is willing, the Commission will issue a Certificate of Interim Trail Use or Abandonment (CITU). The CITU permits the railroad to discontinue service and salvage track and material to the extent consistent with interim trail use and rail banking (this may preclude removal of trestles, culverts, and so forth). The CITU further permits the railroad to fully abandon the line if no agreement is reached for trail use within 180 days after it is issued. The CITU further indicates that interim trail use is subject to future restoration of rail service. In exempt proceedings, a comparable Notice of Interim Trail Use or Abandonment (NITU) will be issued.²⁰ The commission is currently conducting a rulemaking to extend this basic format to unopposed proceedings and to protested but uninvestigated proceedings.

Several technical questions have arisen under the commission's approach. The first concerns the abandoning railroad's responsibility to restore service over a line subject to interim trail use. Burlington Northern, for example, originally indicated that it was unwilling to enter into any voluntary Section 8(d) agreements because of possible residual common carrier obligations. The Commission has laid that concern to rest. In denying a motion for relief pending review of its final regulation, the Commission stated that "[i]t should be clear . . . that trail use" under Section 8(d) will not result in any residual common carrier duties. The Commission continued:

"Since trail use can occur only when the public convenience and necessity require or permit abandonment of service, all certificates for trail use will authorize the railroad to discontinue service. Once a carrier consummates authority to discontinue

THE ICC FORM FOR INVOKING SECTION 8(d)

Statement of Willingness to Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, _____ (Interim Trail User)

is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by _____ (Railroad) and

operated by _____ (Railroad).

The property, known as _____ (Name of Branch Line),

extends from railroad milepost _____, near _____ (Station name), to railroad milepost _____,

near _____, a distance of _____ miles in _____ County(ies), _____ (State(s)).

The right-of-way is part of a line of railroad proposed for abandonment in Docket No. AB-_____ (Sub-No. _____).

A map of the property depicting the right-of-way is attached.

_____ (Interim Trail User) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Commission.

Although section 8(d) was enacted as a single paragraph, it is helpful to separate the three sentences that comprise the paragraph:

1. The Secretary of Transportation, the Chairman of the Interstate Commerce Commission, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs.
2. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with the National Trails System Act, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.
3. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this Act, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

service, operation may only be resumed after an application to operate is approved under, or exempted from, [the Commission's basic rail licensing statute] 49 U.S.C. 10901."²¹

Similarly some concern has been expressed concerning the responsibility of the trail manager to restore rail service. Clearly, the trail manager is responsible to make the property available should the Commission authorize service. However, the manager is not responsible itself to construct a railroad or to provide the service. Trail managers generally are not in the railroad construction business. Congress never expected them to be and apparently neither does the Commission. In the *Maple River and Ida Grove* decision, the Commission noted that it was not licensing the trail manager (there the Carroll County Conservation Board) to operate a rail line and that such operation was not the trail manager's intent.

Section 8(d) has much to offer in terms of both recreation and rail banking. It can provide potentially dispositive assistance in many rail-trail conversion contests, but as long as the ICC's construction of the provision holds, it will do so only with the good faith and cooperation of the railroad industry. Our Nation's railroads have much to gain in terms of public rapport and benefit and nothing of substance to lose from such cooperation. No matter how the pending litigation over Section 8(d) turns out, one may accordingly hope that, with the help of the new provision, state and local agencies will be better able to secure railroad ROW for public trail use in the present, and to preserve the possibility of rail use in the future. ~~END~~

Agencies and organizations interested in obtaining ROW for public use, including recreational use, can obtain further information by calling or writing Rails-to-Trails Conservancy in Washington, D.C.

End Notes

1. 16 U.S.C. §1241(a).
2. See *National Park Service, Rails-to-Trails Grant Program, An Evaluation of Assistance Provided under Public Law 94-210 to Assist in the Conversion of Abandoned Rail and Rights-of-Way to Park and Recreation Use*, p. 19 (August 1985).
3. 16 U.S.C. §1248(b).

4. A major exception is disposition of federal right-of-way grants. Under 43 U.S.C. §912, a state agency may seek such ROW for use as a "public highway" (including a public trail) within one year of a determination by Act of Congress or a court of competent jurisdiction that the ROW is abandoned.
5. *E.g., McKinley v. Waterloo Railroad Co.*, 368 N.W2d 131 (Iowa 1985).
6. NPS, *supra* note 2.
7. Indeed, it is questionable whether the essentially *ex parte* nature of ICC exempt abandonment proceedings permits compliance with general conservation statutes, such as the National Environmental Policy Act, the National Historic Section of the ICC, which is responsible for such matters, has accordingly formally proposed to the Commission that it require 30-day pre-notification of the ICC of an intent to invoke exempt proceedings. See Comments of the Section of Energy and Environment in *Class Exemptions for the Construction of Connecting Tracks under 49 U.S.C. 10901*, dated Aug. 11, 1986. If the Commission adopts this proposal, and if it then provides timely pre-notification to local agencies and interested organizations, some of the problems relating to lack of notice in exempt proceedings may be alleviated.
8. See, *e.g., Burlington Northern Railway Company—Abandonment—Grays Harbor, Washington*, Docket No. AB-6 (Sub. No. 207), Jan. 8 (1985); *Chicago & Northwestern Transp. Co.—Abandonment in Blackhawk County, Iowa*, ICC Dkt. No. AB-1 (Sub. No. 174), decided May 16, 1985.
9. Docket No. 2238, unpublished Order served April 14, 1973.
10. 487 F.2d 646 (1st Cir. 1973), *aff'd*, 353 F. Supp. 141 (D.N.H. 1973).
11. 49 U.S.C. §10906.
12. 353 ICC 975, 977 (1981).
13. See Tiedt, *From Rails to Trails and Back Again: A Look at the Conversion Program*, Parks and Recreation 43 (April 1980).
14. 16 U.S.C. §1247 (d).
15. *Rail Abandonments—Use of Rights-of-Way as Trails, Ex Parte* No. 274 (Sub. No. 13), decided April 16, 1986.
16. *E.g., Association of American Railroads v. Costle*, 562 F.2d 1310, 1312 (D.C. Cir. 1977).
17. 419 U.S. 102 (1974).
18. 28 U.S.C. §1491.
19. Dkt. AB-1 (Sub. No. 191X), decided August 14, 1986.
20. See *Rail Abandonments—Use of Rights-of-Way as Trails, supra* note 14, issuing a new 49 C.F.R. §1152.29.
21. *Rail Abandonments—Use of Rights-of-Way as Trails, Ex Parte* No. 274 (Sub. No. 13), decided August 6, 1986.