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SERVICE DATE – LATE RELEASE OCTOBER 5, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1020 (Sub-No. 1X)

EAST PENN RAILROAD, LLC–ABANDONMENT EXEMPTION–
IN MONTGOMERY COUNTY, PA.

Decided: October 5, 2010

East Penn Railroad, LLC (ESPN) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F–Exempt Abandonments to abandon a 2.14-mile line of railroad between milepost 0.0 in the Borough of Bridgeport, and milepost 2.14 at Henderson Road in Upper Merion Township, in Montgomery County, Pa. Notice of the exemption was served and published in the Federal Register on September 3, 2010 (75 Fed. Reg. 54,215-16). The exemption is scheduled to become effective October 6, 2010.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on September 10, 2010, recommending that no environmental conditions be imposed on any decision granting abandonment authority. Comments to the EA were due by September 24, 2010, but none were received. Accordingly, no environmental or historic conditions will be imposed.

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment of the line. On September 8, 2010, Montgomery County, Pa (County), filed a request for the issuance of a notice of interim trail use (NITU) for a 2.0-mile portion of the right-of-way that extends between milepost 0.0 in the Borough of Bridgeport, and milepost 2.0 in Upper Merion Township, in Montgomery County, Pa. (County right-of-way), under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act) and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905 for that portion of the line, to negotiate with ESPN for acquisition of the County right-of-way for use as a recreational trail. The County also has submitted a statement of willingness to assume full financial responsibility for the 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 County right-of-way, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the County right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a response filed on September 9, 2010, ESPN states that it is willing to negotiate with the County for interim trail use for that portion of the line.

Because the County's request complies with the requirements of 49 C.F.R. § 1152.29, and ESPN is willing to negotiate for trail use, a NITU will be issued for the County right-of-way.

The parties may negotiate an agreement during the 180-day period described below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, ESPN may fully abandon that portion of the line subject to the NITU, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

As noted above, the County also requested a 180-day public use condition for the County right-of-way. The County requested that ESPN be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that ESPN be barred from removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment. The County states that the 180-day period is needed to assemble and review survey and mapping information and to settle negotiations with ESPN.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Aban.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because the County has satisfied these requirements, a 180-day public use condition will be imposed, requiring ESPN to keep intact the County right-of-way (including bridges, trestles, culverts, and tunnels, commencing from the October 6, 2010 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on April 4, 2011, while the trail use negotiating period will run 180 days from the service date of this decision and notice (until April 3, 2011). If a trail use agreement is reached on a portion of the County right-of-way prior to April 4, 2011, ESPN must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, ESPN is not required to deal exclusively with the County, but may engage in negotiations with other interested persons.

Abandonment of this rail line will have no significant effect on the quality of the human environment and the conservation of energy resources or on historic resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 3, 2010, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to implement interim trail use/rail banking as set forth below to permit the County to negotiate with ESPN for trail use of the County right-of-way for a period of 180 days from the service date of this decision and notice (until April 3, 2011); and (2) to permit public use negotiations as set forth below, for a period of 180 days commencing from the October 6, 2010 effective date of the exemption (until April 4, 2011).
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, ESPN may discontinue service over the line. ESPN shall keep intact the County right-of-way, including bridges, trestles, culverts and tunnels, and shall refrain from disposing of the corridor (other than tracks, ties, and signal equipment), for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the County right-of-way for public use. If an interim trail use/rail banking agreement is executed before April 4, 2011, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, 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 County right-of-way.
5. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented and subsequently the user intends to terminate trail use, the trail user must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by April 3, 2011, interim trail use may be implemented. If no agreement is reached by that time, ESPN may fully abandon the above-described portion of the line. See 49 C.F.R. § 1152.29(d)(1).
8. This decision and notice is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.