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SERVICE DATE – LATE RELEASE NOVEMBER 9, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 699X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN MCMINN
COUNTY, TN

Decided: November 9, 2009

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 0.22-mile line of railroad on CSXT's Southern Region, Huntington - West Division, KD Subdivision, extending from milepost OKW 333.40 to milepost OKW 333.62, in Athens, McMinn County, TN. Notice of the exemption was served and published in the Federal Register on October 9, 2009 (74 FR 52294). The exemption is scheduled to become effective on November 10, 2009.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 16, 2009. In the EA, SEA states that it has not heard from the Tennessee State Historic Preservation Office (SHPO) and, therefore, has not been able to consider SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places (National Register). Accordingly, SEA recommends a condition requiring that CSXT retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register (generally, 50 years old or older) until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. CSXT shall report back to the SEA regarding any consultations with the SHPO and any other section 106 consulting parties. CSXT may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due by October 30, 2009. SEA received 5 comments in response to the EA. However, all the commenters found that there were no environmental impacts or significant adverse impacts associated with abandonment. Therefore, the condition recommended by SEA in the EA will be imposed.

In the EA, SEA states the right-of-way may be suitable for other public use following abandonment and salvage of the line. On October 19, 2009, the City of Athens, Tennessee (City) filed a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and a

request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29.¹

The City states that the right-of-way would make an excellent recreational trail and requests that CSXT be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that CSXT be banned from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment. The City states the time period is needed to complete a trail plan and begin negotiations with the carrier.

Under 49 U.S.C. 10905, the right-of-way may be acquired for public use. *Id.* at 609. Under section 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 CFR 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the November 10, 2009 effective date of the exemption. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found suitable for public purposes. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the City, but may engage in negotiation with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on October 9, 2009, exempting the abandonment of the line described above, is modified to require that CSXT shall: (1) (a) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (generally, 50 years old or older) until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed; (b) report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties; and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been

¹ The NITU will not be imposed at this time because the City's filing is incomplete and does not meet the requirements of 49 CFR 1152.29.

completed and the Board has removed this condition; and (2) keep intact the right-of-way, including bridges, trestles, culverts, and tunnels, for a period of 180 days commencing from the November 10, 2009 effective date of the exemption (until May 9, 2010), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.

3. Consistent with the public use condition imposed in this decision, CSXT may discontinue service and salvage track and related materials upon the effective date of this exemption (November 10, 2009).

4. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary