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SERVICE DATE - FEBRUARY 2, 2004

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-389 (Sub-No. 1X)

GEORGIA GREAT SOUTHERN DIVISION, SOUTH CAROLINA CENTRAL  
RAILROAD CO., INC.—ABANDONMENT AND DISCONTINUANCE  
EXEMPTION—BETWEEN ALBANY AND DAWSON, IN TERRELL,  
LEE, AND DOUGHERTY COUNTIES, GA

Decided: January 29, 2004

This decision denies the joint petition of Rails To Trails Conservancy (RTC) and South Georgia Rails to Trails (SGRT) (together, trail sponsors or RTC/SGRT) for partial reconsideration of the decision served May 16, 2003, in which the Board granted a petition to vacate a notice of interim trail use (NITU), pursuant to 49 CFR 1152.29(c)(3). That petition was filed by Georgia Southwestern Railroad, Inc. (GSWR), successor in interest to the Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. (GGS), for a 13.62-mile rail line between Albany and Sasser, GA (the line) so that GSWR can reinstate active rail service on the line in accordance with section 8(d) of the National Trails System Act, codified at 16 U.S.C. 1247(d) (Trails Act).

BACKGROUND

In a decision and NITU served on August 16, 1996, the Board found that GGS should be exempted from the prior approval requirements of 49 U.S.C. 10903-04 to abandon its 13.62-mile line of railroad between milepost 86.5 at Albany and milepost 72.88 at Sasser and to discontinue service over its 5.38-mile line of railroad between milepost 72.88 at Sasser and milepost 67.5 at Dawson, in Terrell, Lee, and Dougherty Counties, GA. A NITU was issued that provided a 180-day period for GGS and the Chehaw Park Authority (Chehaw) to negotiate an interim trail use/rail banking agreement that would avoid abandonment of the 13.62-mile line segment between Albany and Sasser. Subsequently, RTC was substituted for Chehaw as the negotiating party, and in October 1997, the parties advised the Board that they had reached an interim trail use agreement.

In the meantime, GGS's parent, RailTex, Inc. (RailTex), had transferred the line, and various other rail lines, from a rail subsidiary that it controlled, South Carolina Central Railroad Co., Inc. (SCCR), to GSWR, a noncarrier RailTex subsidiary. See RailTex, Inc.—Corporate Family Transaction Exemption—Georgia and Alabama Lines, South Carolina Central Railroad Co., Inc. and Georgia Southwestern Railroad, Inc., Finance Docket No. 32682 (ICC served Apr. 20, 1995). Accordingly, it was GSWR that entered into the interim trail use/rail banking agreement with RTC.

Subsequently, SCCR acquired all of GSWR's rail lines and leased those rail lines back to GSWR. See Georgia Southwestern Railroad, Inc.–Sale and Lease Exemption Within a Corporate Family Transaction–South Carolina Central Railroad, Inc., STB Finance Docket No. 34144 (STB served Jan. 18, 2002). According to GSWR, to ensure that it held the exclusive right to reactivate rail service on this line, it acquired from SCCR any and all rights SCCR might have had in this line at that time.

The current owners of GSWR have had numerous discussions with the State of Georgia Department of Transportation (GDOT) during the past 2 years concerning the reactivation of rail service on the Albany to Sasser line. GDOT has a program of acquiring the assets of light density rail lines to preserve rail service on the lines, and it has tentatively agreed to financially assist GSWR in rehabilitation of the line.

In a decision served on May 16, 2003, the Board granted GSWR's petition to vacate the NITU and also granted petitions for leave to intervene filed by Pioneer Railcorp, and the railroads it owns, and Arkansas-Oklahoma Railroad Company, and the Association of American Railroads (AAR). See Georgia Great Southern Division, South Carolina Central Railroad–Abandonment and Discontinuance Exemption–Between Albany and Dawson, in Terrell, Lee and Dougherty Counties, Ga., Docket No. AB-389 (Sub-No. 1X) (served May 16, 2003) (May 16 decision).

On June 5, 2003, RTC/SGRT filed a petition for partial reconsideration of the May 16 decision. AAR filed a reply on June 23, 2003, and GSWR replied on June 24, 2003.

#### DISCUSSION AND CONCLUSIONS

A petition for reconsideration must state in detail the respects in which the petition raises material error, new evidence, or substantially changed circumstances. 49 CFR 1115.3. RTC/SGRT has not made the required showing here. Accordingly, there are no grounds for reconsidering the previous decision vacating the NITU, and the petition for reconsideration will be denied.

Indeed, trail sponsors have not attempted to meet any of the grounds for reconsideration in 49 CFR 1115.3. Instead, they suggest that the statement that reads, “Under the [Trails Act], the trail sponsor can acquire only the right to use the corridor on an interim basis for trail use, and trail use may continue only until the carrier (or another approved rail service provider) restores rail service on all or part of the line”<sup>1</sup> is inconsistent with the Trails Act's recognition that “rail carriers can transfer lines to

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<sup>1</sup> May 16 decision at 7.

interim trail sponsors by means of donation, lease, sale or otherwise.”<sup>2</sup> They argue that the statement could be interpreted by courts and local law enforcement authorities as voiding property transfers under the Trails Act upon the reactivation of rail service, without regard to the terms of the parties’ private arrangements. They contend that such an interpretation would be inconsistent with the language in the May 16 decision that the Board does not “oversee, review, approve, or interpret the terms of the parties’ trail use agreements.” They also argue that if a property transfer were voided in this manner, this would amount to a taking of RTC/SGRT’s property without due process of law. As indicated in the May 16 decision at 6, the Board is not the proper forum to adjudicate any takings claim trail sponsors may have. Any such claim should be brought in the Court of Federal Claims.

As the May 16 decision explained, the Board’s role under the Trails Act is ministerial, and the Board does not analyze, approve, set the terms of—or even require that parties submit to the Board—their trail use agreements. May 16 decision at 5-6. Instead, trail use agreements are viewed as private contractual matters between railroads and trail sponsors and beyond Board purview. Id. at 6. The May 16 decision properly noted that the Trails Act permits the sale of rail lines from railroads to trail sponsors. Id. at 7 n.6. The Board, in its ministerial role, cannot force or forbid such sales, or become involved in the parties’ negotiations. In stating that trail sponsors can only acquire the right to use rail banked lines on an interim basis, the Board did not intend to prohibit the transfer of a railroad’s entire ownership interest to a trail sponsor in a manner consistent with the Trails Act or to void transfers of property under the Trails Act without regard to the terms negotiated by the parties when rail service is reactivated. Rather, the Board intended simply to reiterate that interim trail use is always subject to the possible reactivation of rail service. In short, under the Trails Act, rail carriers can transfer lines to trail sponsors by means of donation, sale, lease or otherwise, but trail sponsors’ obligation to allow the corridors to remain available for reinstatement of rail service is a statutory obligation that is not contingent on the type of property interests in the line held by either the reactivating railroad or the trail sponsors.

The deed of October 4, 1997 between RTC and GSWR is consistent with this. The deed, which evidently “transferred all [GSWR’s] right, title and ownership interest in the line to RTC,” specifically states:

This Deed is made pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. Section 1247(d), and subject to the Trail Use conditions imposed by the U.S. Surface Transportation Board in STB Docket No. 389 (Sub-No. 1X). . . . It is agreed and understood that any conservation/recreation use by Grantee shall not impair any future restoration of rail service pursuant to the National Trails System Act. Petition to Vacate, Exhibit No. 5.

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<sup>2</sup> 16 U.S.C. 1247(d).

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

It is ordered:

1. The petition for reconsideration is denied.
2. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams  
Secretary