

32885
DO

SERVICE DATE - JULY 12, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 606X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN ALLEGHENY COUNTY, PA

Decided: July 10, 2002

By decision and notice served June 14, 2002, the Board granted the petition by CSX Transportation, Inc. (CSXT) for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad in its Northeast Region, Baltimore Division, P&W Subdivision, extending between milepost BFH 0.0 and milepost BFH 2.1, a distance of approximately 2.1 miles, in Pittsburgh, Allegheny County, PA. The exemption is scheduled to become effective on July 14, 2002.

On June 14, 2002, the Borough of Millvale (Borough) late-filed¹ a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate with CSXT for acquisition of a 0.5-mile portion of the right-of-way (ROW), between milepost BFH 0.0 and milepost BFH 0.5, for use as a trail.² The Borough submitted a statement of willingness to assume financial responsibility for the 0.5-mile portion and has acknowledged that the use of the ROW is subject to possible future reconstruction and reactivation for rail service as required

¹ The due date for requests for trail use/rail banking was April 4, 2002. However, in Aband. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the Borough's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

² In the June 14 decision and notice, the Board issued a 180-day trail use condition as to the 1.6-mile portion of the ROW located within Pittsburgh. The instant request encompasses the remaining 0.5-mile portion of the line at issue.

under 49 CFR 1152.29. By letter filed June 6, 2002, CSXT stated that it would be willing to enter into negotiations with the Borough.³

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved ROW⁴ and the carrier is willing to enter into negotiations. Inasmuch as CSXT is willing to negotiate with the Borough and the Borough's late-filed request otherwise complies with 49 CFR 1152.29, a NITU will be issued for the 0.5-mile portion sought by Millvale. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

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. The proceeding is reopened.
2. Upon reconsideration, the decision and notice served June 14, 2002, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the Borough to negotiate with CSXT for trail use of the 0.5-mile portion of the line between milepost BFH 0.0 and milepost BFH 0.5.
3. If an interim trail use 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 to indemnify the

³ CSXT indicated in its letter that it was willing to negotiate with the City of Pittsburgh, PA, in regard to Pittsburgh's late-filed trail use request and, in the event the Borough of Millvale should file a similar request for trail use, with the Borough also.

⁴ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company—Abandonment—in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.

4. Interim trail use is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use is reached by January 8, 2003 (the 180th day after service of this decision and notice), interim trail use may be implemented. If no agreement is reached by that time, CSXT may abandon the entire line, provided the conditions imposed above are met.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary