

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-347 (Sub-No. 3X)

FLORIDA WEST COAST RAILROAD COMPANY, INC.—ABANDONMENT
EXEMPTION—IN ALACHUA AND GILCHRIST COUNTIES, FL

Decided: August 14, 2007

By decision served on June 14, 2004, the Board granted the petition for exemption filed by Florida West Coast Railroad Company, Inc. (FWCR), for abandonment of an approximately 13-mile line of railroad extending from milepost 734.0, in Trenton, to milepost 721.0, in Newberry, in Alachua and Gilchrist Counties, FL. The exemption was subject to public use, environmental, and standard employee protective conditions.¹ The decision stated that, if consummation were not effected by FWCR's filing of a notice of consummation by June 14, 2005, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. The deadline for FWCR to file its notice of consummation was extended through January 10, 2008, as a result of decisions served on June 28, 2005, October 7, 2005, March 15, 2006, June 14, 2006, and January 16, 2007.

On April 6, 2004, a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), was filed by the Florida Department of Environmental Protection, Office of Greenways and Trails (FDEP). At that time, FWCR stated that it was not willing to negotiate for interim trail use. Therefore, because the Trails Act addresses only voluntary interim trail use, a NITU was not issued. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Subsequently, by letter filed on December 8, 2004, FDEP reintroduced its NITU request, and by letter filed on December 9, 2004, FWCR stated that it was willing to negotiate for interim trail use. However, because FDEP failed to satisfy the requirements of 49 CFR 1152.29(a)(2) in that request, a NITU was not granted.

Under the Trails Act, and the Board's regulations at 49 CFR 1152.29(a)(2), a prospective trail user is required to include "a statement indicating the user's willingness to assume full responsibility: for managing the right-of-way; for any legal liability arising out of the use of the right-of-way (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 all taxes assessed against the right-of-way." Although FDEP has submitted five NITU requests, the most recent of which was filed on July 2, 2007, none of them has included a statement of willingness "to assume full responsibility . . . for any legal liability arising out of the use of the right-of-way (unless the user

¹ The public use condition has expired.

is immune from liability, in which case it need only indemnify the railroad against any potential liability).” The Board cannot issue a NITU without the required statement from the prospective trail user. Accordingly, FDEP’s requests for a NITU will be denied.

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

It is ordered:

1. The requests for a NITU are denied.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary