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SERVICE DATE - FEBRUARY 26, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 518X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN MARION AND SEQUATCHIE COUNTIES, TN

Decided: February 19, 1997

By decision served and notice published in the Federal Register on August 19, 1996 (61 FR 42936-37), the Board granted exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 permitting: (1) Sequatchie Valley Railroad Co., Inc. (SQVR) to discontinue service over 28.9 miles of rail line between milepost LJF-11.0 near Kimball and milepost LJF-39.9 at Brush Creek, in Marion and Sequatchie Counties, TN;¹ and (2) CSX Transportation, Inc. (CSXT) to abandon the 28.9-mile rail line. The exemptions became effective on September 18, 1996.

On August 5, 1996, the City of Whitwell, TN (the City) filed a request for a notice of interim trail use/rail banking (NITU) and for imposition of a public use condition for 180 days. The City's request involved approximately 4.8 miles of rail line between Kimball and Brush Creek in Marion County, commencing at the city limits of Whitwell on the south end and passing through the City to the city limits on the north end where the Whitwell City Recreation Park is located. The City indicated that "the City of Whitwell is willing to assume full responsibility of, for any liability arising out of the transfer in the donating of this land to the City of Whitwell, in which case we need only indemnify the railroad against any potential liability."

By letter received October 22, 1996, CSXT indicated that it was in receipt of the City's trail use request and that it would be willing to negotiate for trail use.

On October 30, 1996, a Board representative contacted David Hooper, City Manager of Whitwell, and informed him that the NITU/public use requests were incomplete because: (1) the trail use request did not contain the required statement of willingness to assume financial responsibility; and (2) there was no indication that the railroad had been served with a copy of the public use request. On that same date, the Board staff faxed to Mr. Hooper's office a copy of the rules and regulations at 49 CFR 1152.28 and 1152.29 and the railroad's mailing address.

By letter filed November 2, 1996, CSXT stated that SQVR had discontinued service over the line and that CSXT had abandoned the segment, effective October 25, 1996. CSXT added that the rail assets would be physically removed in the near future.

Although the City filed trail use and public use requests in this proceeding, the requests were incomplete and the City was so

¹ Sequatchie Valley Railroad Co., Inc.--Discontinuance of Service Exemption--In Marion and Sequatchie Counties, TN, STB Docket No. AB-451X (STB served Aug. 19, 1996).

notified. Despite numerous telephone conversations between Board staff and the City, the latter never filed a written response with the Board or otherwise corrected the defects in its requests. For these reasons, the trail use and public use requests submitted by the City will be dismissed for lack of prosecution.

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

It is ordered:

1. The requests by the City of Whitwell, TN, to be permitted to negotiate for trail use/rail banking and for the imposition of a public use condition are dismissed for lack of prosecution.

2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary