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SERVICE DATE – NOVEMBER 25, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: November 24, 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) (October 9 notice). The exemption became effective on November 10, 2009.¹

The City of Athens (City) filed a request for issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29.² The City has submitted a statement of willingness to assume full financial responsibility for the 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 indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way (ROW), as required at 49 CFR 1152.29, and has

¹ The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) on October 16, 2009, recommending that a historic preservation condition be imposed on the proposed abandonment. By decision served on November 9, 2009 (November 9 decision), the exemption was made subject to that condition. That decision also imposed a public use condition, which expires on May 9, 2010.

² The October 9 notice provided that trail use/rail banking requests were to be filed by October 19, 2009. The City originally requested a NITU along with a public use condition in a pleading filed on October 19, 2009. However, as explained in the November 9 decision, this NITU request was incomplete and did not meet the requirement of 49 CFR 1152.29. The City filed a necessary supplement to its NITU request on November 9, 2009. In Aban. 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 considering the City's request that was supplemented after the due date 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).

acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. In a letter filed on October 29, 2009, CSXT states it is willing to negotiate with the City for interim trail use. Because the City's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, provided that the historic preservation and public use conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

This action 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. The request for a NITU, under 16 U.S.C. 1247(d), is granted.
3. Upon reconsideration, the notice served and published in the Federal Register on October 9, 2009, exempting the abandonment of the 0.22-mile line of railroad described above, is modified to the extent necessary to implement interim trail use/ rail banking as set forth below to permit the City to negotiate with CSXT for trail use of the subject line, for a period running concurrently with the 180-day public use condition already imposed.
4. If an interim trail use/rail banking 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 indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.
6. 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.
7. If an agreement for interim trail use/rail banking is reached by May 9, 2010, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its date of service.

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