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SERVICE DATE - SEPTEMBER 26, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-268 (Sub-No. 15X)

PORTLAND TERMINAL COMPANY--ABANDONMENT EXEMPTION--
IN CUMBERLAND COUNTY, ME

Decided: September 24, 1997

The Portland Terminal Company (PT) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and discontinuances to abandon an approximately 1.09-mile line of railroad on the Yard 3 Track between Engineering Station 82+03 and Engineering Station 23+97, in Portland, Cumberland County, ME. Notice of the exemption was served and published in the Federal Register on August 28, 1997 (62 FR 45698). The exemption is scheduled to become effective on September 27, 1997.

By petition filed September 2, 1997, the City of South Portland (City) filed a request for the issuance of a notice of interim trail use/rail banking (NITU) for the entire line under 16 U.S.C. 1247(d) and a public use condition under 49 U.S.C. 10905, so that it could negotiate with PT for use of the line as a recreational trail.

The City requests that PT be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, along the right-of-way, except for public use on reasonable terms, and that PT be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period.

By reply filed September 19, 1997, PT states that it is not willing to negotiate with the City for interim trail use. PT asserts that it has negotiated an agreement with a private party for sale of the line. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

PT also opposes imposition of a public use condition. As an alternative to interim trail use under the National Trails System Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). The City has met these requirements. A 180-day public use condition will, therefore, be imposed. PT may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, culverts, and tunnels intact during that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found appropriate for public purposes.¹

This decision 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 issuance of a notice of interim trail use is denied.

¹ Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

3. The request for a public use condition is granted. The abandonment of the 1.09-mile segment is subject to the condition that PT leave intact all of the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels (but not tracks, ties and signal equipment), for a period of 180 days from the September 27, 1997 effective date of the exemption (i.e., until March 26, 1998), to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary