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SERVICE DATE – NOVEMBER 5, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. FD 29830

MARYLAND AND DELAWARE RAILROAD COMPANY—
CERTIFICATE OF INTERIM TRAIL USE AND PARTIAL TERMINATION OF MODIFIED
RAIL CERTIFICATE

Decided: November 4, 2010

In Maryland and Delaware Railroad—Modified Rail Certificate, FD 29830 (ICC served Feb. 9, 1982), the Maryland and Delaware Railroad Company (M&D) was issued a modified certificate of public convenience and necessity (modified certificate) under then 49 C.F.R. § 1120A to operate freight rail service over, among other segments of rail line,¹ a 2-mile segment of line from Val. Sta. 993+45 south of Worton, Md., to the end of the line at Val. Sta. 1071+41 in Chestertown, Md., and also the right-of-way known as the Strawboard Branch from High Street at Val. Sta. 0+00 to its terminus at Val. Sta. 50+40, all within the municipal limits of Chestertown, Md. (collectively, the Segment).

On September 22, 2010, M&D filed a notice of its intent to terminate service under the modified certificate as it applies to the Segment.² On that same date, the town of Chestertown (Town) filed a request for the imposition of interim trail use under the National Trails System Act, 16 U.S.C. § 1247(d). The Town has submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required pursuant to 49 C.F.R. § 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. On October 8, 2010, the Maryland Transit Administration (MTA), owner of the real property interest underlying the

¹ Maryland and Delaware Railroad Co.—Termination of Modified Rail Certificate, FD 29830 (STB served Jan. 9, 2006) noted the termination of M&D's modified rail certificate over approximately 54.1 miles of rail line owned by the State of Maryland between milepost 00.0 at Clayton, Del., and milepost 45.3 at Easton, Md., and a connecting branch line between milepost 00.0 at Queen Anne, Md., and milepost 8.8 at Denton, Md.

² Under 49 C.F.R. § 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. Further, notice must be given to all persons that have used the line within the 6 months preceding the date of the notice. However, M&D states that no freight service has moved over the Segment for over 20 years and, therefore, it is not providing notice to shippers, if any, on the Segment.

Segment, confirmed its consent to the partial termination of the modified certificate and the request for interim trail use.³

The Board has jurisdiction to impose interim trail use in a proceeding where a notice is filed under 49 C.F.R. § 1150.24 to terminate operations under a modified certificate. See Wis. and Calumet R.R.—Notice of Interim Trail Use and Termination of Modified Certificate, FD 30724 (Sub-No. 1) (ICC served Aug. 8, 1989), and Sammamish Transp. Co.—Notice of Interim Trail Use and Termination of Modified Certificate, FD 33398 (Sub-No. 1) (STB served Feb. 26, 1998).

Because the Town's request complies with the requirements of 49 C.F.R. § 1152.29, and MTA has confirmed its consent to the interim trail use, a certificate of interim trail use (CITU) will be issued for the above-described line. Although the parties indicate that they have already reached an interim trail use agreement, they will be given the full 180-day period below to finalize or modify any such agreement. If they reach (or have reached) a mutually acceptable final agreement, then no further Board action is necessary. If no agreement has been reached within 180 days, the line may be fully abandoned. See 49 C.F.R. § 1152.29(c)(1). Use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations. See 49 C.F.R. § 1152.29(c)(2).

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

It is ordered:

1. The request for interim trail use under 16 U.S.C. § 1247(d) is accepted.
2. 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 owner against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
3. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the ROW.
4. 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 certificate and request that it be vacated on a specified date.

³ According to an October 13, 2010 filing, the Town has entered into a trail use agreement with MTA.

5. If an agreement for interim trail use/rail banking has been reached by the 180th day after service of this decision and certificate, interim trail use may be implemented. If no agreement is reached by that time, the line may be fully abandoned. See 49 C.F.R. § 1152.29(d)(1).

6. This decision is effective on its service date.

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