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SERVICE DATE – DECEMBER 26, 2007

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 32609

CHESAPEAKE RAILROAD COMPANY–CERTIFICATE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE

Decided: December 21, 2007

In Chesapeake Railroad Company–Modified Rail Certificate, Finance Docket No. 32609 (ICC served Nov. 23, 1994), Chesapeake Railroad Company (CHRR) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 1150, subpart C, to operate approximately 54.1 miles of rail line owned by the State of Maryland between milepost 00.0 at Clayton, DE, 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 (collectively, Clayton-Easton line).

On July 28, 2005, the Maryland Transit Administration (MTA), on behalf of the State of Maryland, filed notice on behalf of CHRR of its intent to terminate service under the modified certificate over the Clayton-Easton line.¹ On that same date, MTA filed a request for issuance of a certificate of interim trail use (CITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the Clayton-Easton line. MTA submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service.

On January 9, 2006, a decision and CITU was served authorizing a 180-day period for MTA to negotiate an interim trail use/rail banking agreement for the Clayton-Easton line.

On June 7, 2006, MTA filed a motion to extend the negotiating period for an additional 180 days. MTA's motion stated that it was in the process of negotiating an agreement with the Maryland Department of Natural Resources (DNR) to assume the responsibility of trail user for the Clayton-Easton line. However, the Board had received no statement of willingness to assume financial responsibility from DNR, and MTA was asked to supplement its motion. On June 28, 2006, MTA filed a supplemental motion, stating that MTA was negotiating with the

¹ Under 49 CFR 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. CHRR, however, no longer had an operating agreement with MTA, and CHRR was determined to have ceased existence as a corporate entity in Maryland. Therefore, the Board allowed MTA to file on CHRR's behalf.

Maryland Department of Transportation (MDOT) to assume the responsibility of trail user for the Clayton-Easton line. MDOT executed the necessary statement of willingness to assume financial responsibility as an attachment to MTA's supplemental motion. By decision served on July 10, 2006, the Board granted MTA's motion to extend the CITU negotiating period an additional 180 days, until January 6, 2007. On December 18, 2006, MTA filed a motion to further extend the negotiating period an additional 180 days (until July 5, 2007). By decision served on January 5, 2007, the Board granted MTA's motion to extend the CITU negotiating period.

On June 13, 2007, MTA filed a notice of intent pursuant to 49 CFR 1152.29(c), to "remove property known as the "Easton Spur" from the CITU." The Easton Spur consists of a parcel of approximately 5.514 acres on which is situated a spur track extending between the main ROW at approximately milepost 45.3, at Easton, and U.S. Route 50, a distance of approximately 1,645 feet. On June 14, 2007, MTA filed a motion to extend the negotiating period for the remaining ROW an additional 180 days (until January 1, 2008). By decision served on July 5, 2007, the Board reopened the proceeding, partially vacated the CITU with respect to the "Easton Spur," and extended the CITU negotiating period for the remaining ROW.

On December 17, 2007, MTA filed a motion to extend the negotiating period for the remaining ROW an additional 90 days (until March 31, 2008) to complete the required agreement in this proceeding. MTA states that its negotiations with MDOT are continuing, and that MDOT has indicated that it expects to execute the trail use agreement in the first quarter of 2008. MTA also states that MDOT has authorized MTA to state that it concurs with the request for an extension.

Where, as here, the parties are willing to continue trail use negotiations, the negotiating period may be extended. An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the Trails Act.² Accordingly, the CITU negotiating period will be extended for an additional 90 days from January 1, 2008 (until March 31, 2008).

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

It is ordered:

1. The motion of MTA to extend the CITU negotiating period is granted.
2. The negotiating period under the CITU is extended for 90 days until March 31, 2008.

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary