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SERVICE DATE – LATE RELEASE JANUARY 20, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-297 (Sub-No. 102X)

COLUMBUS AND GREENVILLE RAILWAY COMPANY–ABANDONMENT
EXEMPTION–
IN LEFLORE COUNTY, MS

Decided: January 20, 2006

Columbus and Greenville Railway Company (C&G) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.18-mile line of railroad between milepost 112.67 and milepost 113.85, in the City of Greenwood (City), in Leflore County, MS. Notice of the exemption was served and published in the Federal Register on December 22, 2005 (70 FR 76105-06). The exemption is scheduled to become effective on January 21, 2006.

The Board’s Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on December 27, 2005, recommending no environmental conditions. Comments on the EA were due by January 11, 2006.

By facsimile dated January 4, 2006, C&G filed a comment clarifying the EA. Specifically, C&G clarified that, although there had been no originated or terminated local traffic on the rail line proposed for abandonment for over 2 years, there was overhead traffic until the Board authorized C&G to use a new bypass track in April 2005.¹ In addition, C&G noted that the EA referred to the City of “Greenwood” as the City of “Greenville” twice in the EA. SEA’s earlier recommendation remains unchanged. Accordingly, no environmental conditions will be imposed.

In the EA, SEA also indicated that the right-of-way may be suitable for other public use following abandonment. On December 5, 2005, the City of Greenwood (City) filed a request for issuance of a public use condition under 49 U.S.C. 10905.² By letter filed on January 11, 2006,

¹ See Columbus and Greenville Railway Company–Acquisition and Operation Exemption–Line of City of Greenwood, MS, STB Finance Docket No. 34666 (STB served Apr. 22, 2005).

² The notice of exemption indicated that a public use request would be addressed in a subsequent decision.

the City late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29.³ The City submitted a statement of willingness to assume 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, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile filed on January 11, 2006, C&G indicates that it is willing to negotiate for interim trail use.

Because the City's request complies with the requirements of 49 CFR 1152.29 and C&G 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, C&G may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

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). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the January 21, 2006 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, C&G must keep the remaining portion intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect

³ The December 22, 2005 notice provided that trail use/rail banking requests were to be filed by December 30, 2005. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894, 900 (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 C&G's late-filed request 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).

to the public use condition, C&G is not required to deal exclusively with the City, but may engage in negotiation with other interested persons.

As conditioned, this decision and notice 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. Upon reconsideration, the notice served and published in the Federal Register on December 22, 2005, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the January 21, 2006 effective date of the exemption (until July 20, 2006).
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, C&G may discontinue service and salvage track and related materials. C&G shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before July 20, 2006, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
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 right-of-way.
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 right-of-way.
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 July 20, 2006, interim trail use may be implemented. If no agreement is reached by that time, C&G may fully abandon the line.

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

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

Vernon A. Williams
Secretary