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SERVICE DATE – SEPTEMBER 19, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 32609

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

Decided: September 16, 2011

This decision extends the negotiating period under the certificate of interim trail use (CITU) until 60 days after the conclusion of proceedings pertaining to this docket currently pending before the United States Court of Appeals for the Fourth Circuit.

In Chesapeake Railroad Company–Modified Rail Certificate, FD 32609 (ICC served Nov. 23, 1994), Chesapeake Railroad Company (CHRR) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 C.F.R. § 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 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 (Statement of Willingness) for management of the right-of-way (ROW) as required at 49 C.F.R. § 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

¹ 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. 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 Natural Resources (MDNR) to assume the responsibility of trail user for the Clayton-Easton line. However, the Board had received no Statement of Willingness from MDNR, and MTA was asked to supplement its motion. On June 28, 2006, MTA filed a supplemental motion, stating that MTA was negotiating with the Maryland Department of Transportation (MDOT) to assume the responsibility of trail user for the Clayton-Easton line. MDOT executed the necessary Statement of Willingness 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. The Board granted 4 additional extension requests, extending the negotiating period until September 27, 2008.²

On September 26, 2008, MTA filed a notice indicating that it had entered into interim trail use agreements on the remaining ROW: an interim trail use agreement with MDNR for the Maryland portion of the property, and a separate agreement with the Delaware Department of Natural Resources and Environmental Control (DNREC) for the Delaware portion. MTA requested that the Board vacate the CITU and issue new CITUs to reflect the agreements reached with MDNR and DNREC.³ By decision served on August 21, 2009, the Director of the Office of Proceedings (Director) denied MTA's request based on deficiencies in MDNR's and DNREC's Statements of Willingness. MTA appealed the Director's decision to the full Board. By decision served on February 24, 2011 (February 24 decision), the Board denied MTA's appeal. By decision served on April 22, 2011, the Board granted MTA's request to further extend the negotiating period with MDOT pursuant to the prior CITU until August 23, 2011.

MTA states that it filed on April 22, 2011, a petition for review of the Board's February 24 decision before the United States Court of Appeals for the Fourth Circuit.⁴ On August 22, 2011, MTA filed a request to extend the CITU until 60 days after the conclusion of the Fourth Circuit proceedings.⁵

² The Board's July 5, 2007 decision also reopened the proceeding and partially vacated the CITU to "remove property known as the "Easton Spur." 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.

³ On May 22, 2009, MTA sought to amend its CITU request by substituting a new Statement of Willingness by DNREC, consisting of a license agreement, dated September 25, 2008, between it and DNREC.

⁴ Case No. 11-1412.

⁵ This extension request is likely to exceed the standard extension of 180 days. However, the Board has granted such extensions in the past. See S. Pac. Transp. Co.—Aban. Exemption—Wendel-Alturas Line in Modoc and Lassen Cntys., Calif., Docket No. AB 12 (Sub-No. 184X) (STB served Mar. 7, 2002).

Where, as here, the parties are willing to continue trail use negotiations and it is clear that there has been no intent to abandon the ROW at the end of the previously imposed negotiating period, the Board retains jurisdiction and the CITU negotiating period may be extended.⁶ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the CITU negotiating period will be extended until 60 days after the completion of MTA's appeal in Case No. 11-1412 before the Fourth Circuit.

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 until 60 days after the completion of the proceedings in Case No. 11-1412 before the United States Court of Appeals for the Fourth Circuit.
3. This decision is effective on the date of service.

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

⁶ See Rail Abans.–Use of Rights-Of-Way as Trails–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).