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SERVICE DATE – LATE RELEASE JUNE 22, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1005X

FINGER LAKES RAILWAY CORP.–ABANDONMENT EXEMPTION–  
IN YATES COUNTY, NY

Decided: June 22, 2007

Finger Lakes Railway Corp. (FGLK) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 4.95-mile line of railroad between milepost 41.35, in the Village of Penn Yan, Township of Benton, and milepost 46.3, outside the Township of Benton, located in Yates County, NY. Notice of the exemption was served and published in the Federal Register on May 24, 2007 (72 FR 29204-29205). The exemption is scheduled to become effective on June 23, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 29, 2007. In the EA, SEA noted that the National Geodetic Survey (NGS) has stated that four geodetic station markers may be affected by the proposed abandonment and requested 90 days' notification in advance of any activities that will disturb or destroy these markers in order to plan for their relocation. Therefore, SEA recommended a condition that FGLK be required to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.

Comments to the EA were due by June 13, 2007. In a letter filed on June 13, 2007, FGLK states that salvage activities will only take place within the existing rail bed, and following recent discussions with NGS, FGLK confirms that no geodetic station markers would be affected by the proposed abandonment. Accordingly, SEA believes that the condition is no longer necessary.

On June 4, 2007, Friends of the Outlet, Inc. (Friends) and the New York State Office of Parks, Recreation and Historic Preservation (together, proponents) separately filed requests for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. Proponents have submitted statements of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (or, in the case of Friends, 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 have acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.

In response, FGLK states that it is premature to determine whether the right-of-way should be converted to trail use and thus has not agreed to negotiate for trail use. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. The Board's trail use authority is limited because the trail use program is voluntary and consensual between the railroad and the trail user. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). As such, it applies only if the abandoning railroad agrees to negotiate. Accordingly, proponents' trail use requests will be denied.

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. Id. at 609. 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 proponents have satisfied these requirements, a 180-day public use condition will be imposed, commencing from the June 23, 2007 effective date of the exemption. Also, 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 suitable for public purposes. Therefore, with respect to the public use condition, FGLK is not required to deal exclusively with either proponent, but may engage in negotiation with other interested persons.

As conditioned, 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. Upon reconsideration, the notice served and published in the Federal Register on May 24, 2007, exempting the abandonment of the line described above, is modified to require that FGLK keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days commencing from the June 23, 2007 effective date of the exemption (until December 20, 2007), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.
3. Consistent with the public use condition imposed in this decision, FGLK may discontinue service and salvage track and related materials upon the effective date of this exemption (June 23, 2007).
4. Proponents' requests for issuance of a notice of interim trail use are denied.

5. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary