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SERVICE DATE - JULY 8, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-601X

PINE BELT SOUTHERN RAILROAD COMPANY, INC.–ABANDONMENT
EXEMPTION–IN RUSSELL, BULLOCK, AND MACON COUNTIES, AL

Decided: July 3, 2002

Pine Belt Southern Railroad Company, Inc. (PBRR), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 15-mile line of railroad between milepost S-304.00 at Nuckols and milepost S-329.00 at Hurtsboro, in Russell, Bullock, and Macon Counties, AL. Notice of the exemption was served and published in the Federal Register on May 23, 2002 (67 FR 36299). The exemption became effective on June 22, 2002.

On June 19, 2002, the Macon County Commission (MCC) 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),¹ and for a public use condition under 49 U.S.C. 10905,² in order to negotiate with PBRR for acquisition of the right-of-way for use as a recreational trail.³

¹ The May 23, 2002 notice of exemption provided that trail use/rail banking requests had to be filed by June, 3, 2002, and that requests for public use conditions had to be filed by June 12, 2002. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (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 MCC'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).

² The Board's Section of Environmental Analysis (SEA) served an environmental assessment on May 28, 2002, which indicated that the right-of-way may be suitable for other public use following abandonment.

³ MCC submitted a statement indicating its willingness to assume 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

(continued...)

MCC requests that PBRR be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that PBRR be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period extending from the effective date of the abandonment exemption.

By facsimile filed on June 27, 2002, PBRR states that it is not willing to negotiate with MCC for interim trail use. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails 2 I.C.C.2d 609. 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). MCC has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption. MCC states that it needs the full 180-day period because it has not had an opportunity to assemble or review title information, complete a trail plan, or commence negotiations with PBRR. PBRR may remove tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, trestles, culverts, and tunnels intact during that period. 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 appropriate for public purposes.⁴

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

³(...continued)

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.

⁴ Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed for abandonment and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

It is ordered:

1. This proceeding is reopened.
2. The request for issuance of a notice of interim trail use is denied.
3. The request for a public use condition is granted. The exemption of the abandonment of the 25-mile segment is subject to the condition that PBRR leave intact all of the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels (but not tracks, ties and signal equipment), for a period of 180 days from the June 22, 2002 effective date of the abandonment exemption (until December 19, 2002), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary