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SERVICE DATE – JULY 2, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 501X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN LUCAS AND
WOOD COUNTIES, OHIO

Decided: July 2, 2010

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon approximately 2.15 miles of railroad between milepost CO-14.31 at River Road in Lucas County, Ohio, and milepost CO-16.46 at Bates in Wood County, Ohio. Notice of the exemption was served and published in the Federal Register on March 8, 1995 (60 Fed. Reg. 12,783). The exemption became effective on April 7, 1995.

The Interstate Commerce Commission's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 16, 1995. In the EA, SEA noted that the Ohio State Historic Preservation Office had not provided SEA with its conclusions concerning determination of eligibility of any sites or structures located along the line. Accordingly, SEA recommended that a condition be imposed requiring CSXT to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f. By decision served April 7, 1995, the recommended condition was imposed.

On June 23, 2010, Metroparks of the Toledo Area (Metroparks) late-filed¹ a request for imposition of a public use condition and for issuance of a notice of interim trail use or abandonment (NITU) for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act) in order to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail. Metroparks also 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

¹ The March 8, 1995 notice established March 20, 1995, as the deadline for filing trail use/rail banking requests. Thus, the time for filing trail use requests has long since passed. 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 Metroparks' late-filed submission has not delayed the proceeding and will not prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, Docket No. AB 227 (Sub-No. 10X), slip op. at 1 n. 1 (served Nov. 7, 1997).

against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reactivation for rail service. By letter filed June 24, 2010, CSXT has indicated its willingness to negotiate with Metroparks for interim trail use.

Trail use requests may be accepted as long as the Surface Transportation Board (Board) retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations. Because CSXT has not consummated the abandonment and is willing to negotiate for trail use with Metroparks, and Metroparks' request complies with the requirements of 49 C.F.R. § 1152.29, 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, CSXT may fully abandon the line, provided that CSXT has complied with the section 106 condition imposed in the April 7, 1995 decision. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

Under 49 U.S.C. § 10905, the Board may only impose public use conditions for up to 180 days after the effective date of an abandonment, as its authority to impose such a condition expires after that period. See Rail Abandonment—Public Use Conditions—Revision, 8 I.C.C.2d 392, 395-398 (1992). See 49 C.F.R. § 1152.28(b). As noted, this abandonment became effective on April 7, 1995. Thus, the Board's jurisdiction to impose a public use condition in this proceeding expired on October 4, 1995. Accordingly, the late-filed public use request will be denied.

This action 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. Metroparks' late-filed request for interim trail use/rail banking is accepted and granted.
3. Metroparks' late-filed request to impose a public use condition is denied.
4. Upon reconsideration, the decision served on March 8, 1995, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 180 days commencing from the service date of this decision and notice, until December 29, 2010.

5. 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.

6. 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.

7. 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.

8. If an agreement for interim trail use/rail banking is reached by December 29, 2010, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided that CSXT has complied with the section 106 condition imposed in the April 7, 1995 decision.

9. This decision and notice is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.