

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 32609

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

Decided: July 5, 2007

In Chesapeake Railroad Company–Modified Rail Certificate, Finance Docket No. 32609 (ICC served Nov. 23, 1994), Chesapeake Railroad Company (CHRR) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 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.<sup>1</sup> On that same date, MTA filed a request for issuance of a certificate of interim trail use (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 for management of the right-of-way (ROW) as required at 49 CFR 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 Maryland Department of Natural Resources (DNR) to assume the responsibility of trail user for the Clayton-Easton line. However, the Board had received no statement of willingness to assume financial responsibility from DNR, and MTA was asked to supplement its motion. On June 28, 2006, MTA filed a supplemental motion, stating that MTA was negotiating with the

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<sup>1</sup> Under 49 CFR 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 Transportation (MDOT) to assume the responsibility of trail user for the Clayton-Easton line. MDOT executed the necessary statement of willingness to assume financial responsibility 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 an additional 180 days, until January 6, 2007. On December 18, 2006, MTA filed a motion to further extend the negotiating period an additional 180 days (until July 5, 2007). By decision served on January 5, 2007, the Board granted MTA's motion to extend the CITU negotiating period.

On June 13, 2007, MTA filed a notice of intent pursuant to 49 CFR 1152.29(c), to remove property known as the "Easton Spur" from the CITU. 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.

MTA has complied with the requirements of 49 CFR 1152.29(c)(2) regarding a request to partially vacate the CITU. Whenever a trail user intends to terminate trail use over a portion of the ROW and sends the Board a request that a CITU be vacated in part, the Board will reopen the proceeding and partially vacate the CITU. Therefore, MTA's request to partially vacate the CITU will be granted with respect to 5.514 acres of the ROW.

On June 14, 2007, MTA filed a motion to extend the negotiating period for the remaining ROW an additional 180 days (until January 1, 2008). MTA states that its negotiations with MDOT are continuing, and that MDOT has asked for additional time to complete its inspection of the line prior to assuming the responsibilities as the trail user. MTA also states that MDOT has authorized MTA to state that it concurs with the request for an extension.

Where, as here, the parties are willing to continue trail use negotiations, the negotiating period may be extended. An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the Trails Act.<sup>2</sup> Accordingly, the CITU negotiating period will be extended for an additional 180 days from July 5, 2007 (until January 1, 2008).

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.

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<sup>2</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

2. MTA's request to vacate the CITU for the 5.514 acres of the ROW described above is granted.

3. The CITU, served on January 9, 2006, is vacated with respect to 5.514 acres of the ROW known as the Easton Spur. The CITU will remain in effect for the remainder of the ROW described in the January 2006 decision.

4. The motion of MTA to extend the CITU negotiating period is granted.

5. The negotiating period for the remaining ROW under the CITU is extended for 180 days until January 1, 2008.

6. This decision is effective on the date of service.

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

Vernon A. Williams  
Secretary