

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 14X)

CENTRAL KANSAS RAILWAY, L.L.C.—ABANDONMENT EXEMPTION—
IN SEDGWICK COUNTY, KS

Decided: September 13, 2002

By decision served on April 10, 2001, the Board granted Central Kansas Railway, L.L.C. (CKR) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903-05 to abandon a line of railroad extending between milepost 19.5 near Garden Plain, KS, and milepost 3.5 southeast of the grade crossing at McCormick Avenue in Wichita, KS, a distance of 16 miles in Sedgwick County, KS. The grant was made subject to conditions relating to the rerouting of overhead traffic, as well as to environmental, historic preservation, and standard employee protective conditions. The exemption became effective on May 10, 2001.

Four notices of interim trail use or abandonment (NITUs) have been issued in this proceeding. First, on May 30, 2001, a NITU¹ was served authorizing a 180-day period for Southwind Community Synergy, Inc. (SCS) to negotiate an interim trail use/rail banking agreement with CKR for a portion of rail line known as the Wichita-Garden Plain segment, extending from milepost 19.5 near Garden Plain, to milepost 9.62 near 135th Street West, a distance of 9.88 miles in Sedgwick County. The negotiating period expired on November 26, 2001.²

Second, by decision served on June 15, 2001, another NITU was served authorizing: (1) the City of Wichita (Wichita) to negotiate with CKR for a portion of the line between milepost 3.5

¹ See the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

² On December 26, 2001, SCS filed a request to extend its NITU negotiating period for an additional 180 days to enable it to continue its negotiations with CKR for use of the line as a trail. However, by letter filed January 29, 2002, CKR indicated that it was not willing to further negotiate with SCS for trail use. Because the Trails Act permits only voluntary interim trail use, the Board could not and did not grant the extension request. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

southeast of the grade crossing at McCormick Avenue and milepost 3.53 near West Street, and between milepost 4.53 near Hoover Road and milepost 8.62 near 119th Street in Wichita, a distance of 4.12 miles;³ and (2) Sedgwick County (County) to negotiate with CKR for a portion of the line between milepost 8.62 and milepost 9.62 near 135th Street near Wichita, a distance of 1.0 mile.⁴

Third, on February 4, 2002, Wichita filed a request for issuance of a NITU for the portion of the line between milepost 9.62 near 135th Street and milepost 11.62 near 167th Street, a distance of 2.0 miles. Also, on that date, the City of Goddard, KS (Goddard), filed a request for issuance of a NITU for a portion of the line between milepost 11.62 and milepost 15.60 near 231st Street, a distance of 3.98 miles. These NITU requests were granted in a decision served on March 20, 2002, and the pertinent negotiation period is scheduled to expire on September 16, 2002.

Fourth, on March 7, 2002, the City of Garden Plain, KS (Garden Plain), filed a request for issuance of a NITU for a portion of the line between milepost 15.60 near 231st Street and milepost 19.5 near 295th Street, a distance of 3.9 miles. This NITU request was also granted in the March 20, 2002 decision and is also scheduled to expire on September 16, 2002.

By letter filed on September 3, 2002, Goddard filed for an extension of the negotiating period for an additional 120 days to complete negotiations for the portion of the line between mileposts 11.62 and 15.60. CKR states that it is agreeable to the request.

By letter filed on September 6, 2002, Wichita sought an extension of the negotiating period for an additional 90 days to complete negotiations for the portion of the line between mileposts 9.62 and 11.62. Wichita states that it and CKR have been negotiating in good faith and that they will not be able to complete the negotiation process within the current negotiating period. CKR states that it is agreeable to the request.

³ By letter filed on December 17, 2001, Wichita gave notification that a trail use/rail banking agreement had been consummated with regard to that portion of the line located between milepost 4.53 and milepost 8.62, and that it has decided not to proceed with plans to develop a trail on the portion of the line between milepost 3.5 and milepost 3.53.

By letter filed on April 8, 2002, CKR gave notification that it had consummated abandonment of that portion of the line between milepost 3.5 and milepost 4.53 on April 1, 2002.

⁴ By letter dated November 13, 2001, the County gave notification that a trail use/rail banking agreement had been consummated on October 31, 2001, with regard to the portion of the line between milepost 8.62 and milepost 9.62.

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the negotiating period may be extended.⁵ The parties have shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating periods will be extended for 120 days for Goddard and for 90 days for Wichita.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The requests to extend the interim trail use negotiating periods are granted.
2. The negotiating period for Goddard under the NITU is extended until January 14, 2003, for the portion of the line between milepost 11.62 and milepost 15.60 near 231st Street.
3. The negotiating period for Wichita under the NITU is extended until December 15, 2002, for the portion of the line between milepost 9.62 near 135th Street and milepost 11.62 near 167th Street.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

⁵ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).