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SERVICE DATE - MAY 23, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 8X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT
EXEMPTION IN DELAWARE COUNTY, OH

Decided: May 22, 2002

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants), filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 1.5 miles of railroad from milepost QED 114.1 to milepost QED 115.6 in Delaware County, OH. Notice of the exemption was served and published in the Federal Register on April 12, 2002 (67 FR 18053-54).¹ The exemption became effective on May 14, 2002.²

On May 15, 2002, the City of Delaware (City) 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), and for a public use condition under 49 U.S.C. 10905,³ in order to negotiate with applicants for acquisition of the right-of-way for use as a recreational trail.⁴ The City requests that

¹ The notice issued April 12, 2002, embraced STB Docket No. AB-55 (Sub-No. 608X), CSX Transportation, Inc.-Discontinuance of Service Exemption-in Delaware County, OH.

² By decision served on May 13, 2002, the exemption was made subject to environmental and historic preservation conditions.

³ The Board's Section of Environmental Analysis (SEA) served an environmental assessment on April 19, 2002, which indicated that the right-of-way may be suitable for other public use following abandonment.

⁴ The April 12 notice provided that trail use/rail banking requests had to be filed by April 22, 2002, and that requests for public use conditions had to be filed by May 2, 2002. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B.

(continued...)

applicants be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that applicants be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The City states that the time period is needed in order to negotiate with applicants and develop a trail plan. The City 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 (if the user is immune from liability, it need only indemnify the railroad 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 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. In a response submitted by letter, applicants indicated their willingness to negotiate with the City for interim trail use and its agreement with imposition of a public use condition.

Because the City's request complies with the requirements of 49 CFR 1152.29 and applicants are willing to negotiate for trail use, 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, NYC may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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 Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). 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). The City has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

⁴(...continued)

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 the City's late-filed requests will prejudice any party, they 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).

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on November 10, 2002, while the trail use negotiation period will run from 180 days from the service date of this decision (until November 19, 2002). If a trail use agreement is reached on a portion of the right-of-way, applicants must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, 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 suitable for public purposes, including trail use. Therefore, with respect to the public use condition, applicants are not required to deal exclusively with the City, but may engage in negotiations 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 April 12, 2002, 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, subject to the conditions imposed in the May 13, 2002 decision, and subject to the conditions that applicants keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels, for a period of 180 days after the May 14, 2002 effective date (until November 10, 2002), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
3. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
4. 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 (if the user is immune from liability, 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.
5. 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.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by November 19, 2002, interim trail use may be implemented. If no agreement is reached by that time, NYC may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary