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SERVICE DATE – LATE RELEASE FEBRUARY 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1064X

FULTON COUNTY, LLC—ABANDONMENT EXEMPTION—
IN FULTON COUNTY, IND.

Decided: February 7, 2011

Fulton County, LLC (FC) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad between milepost 96.9, a point 200 feet north of East 18th Street, and milepost 95.6, the end of the track at the northwest property line of Wabash Road, a distance of 1.3 miles, in Rochester, Fulton County, Ind. (the line). Notice of the exemption was served and published in the Federal Register on July 22, 2010 (75 Fed. Reg. 42,815-16). The exemption was scheduled to become effective on August 21, 2010.

By Decision and Notice of Interim Trail Use or Abandonment, served on August 20, 2010 (August 2010 decision), the Board reopened the proceeding and modified the notice exempting the abandonment of the line: (1) to permit Nickel Plate Trail, Inc. (Nickel Plate), under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), to negotiate with FC for trail use of the line for a 180-day period until February 16, 2011; and (2) under 49 U.S.C. § 10905, to permit public use negotiations for the line for a period of 180 days until February 17, 2011.

On January 3, 2011, Northern Indiana Community Foundation, Inc. (Community Foundation) also filed a request under 49 U.S.C. § 10905 for a public use condition and for the issuance of a notice of interim trail use (NITU) for the line under the Trails Act and 49 C.F.R. § 1152.29 to negotiate with FC for acquiring the right-of-way for use as a trail.

A new public use condition will not be imposed because, under § 10905, such conditions may only prohibit disposal of the properties involved in a proposed abandonment “for a period of not more than 180 days after the effective date of the [abandonment].” Accordingly, the earlier imposed public use negotiating period, which expires on February 17, 2011, may not be extended. As explained in the August 2010 decision, with respect to the public use condition, FC was not required to deal exclusively with Nickel Plate, but could engage in negotiations with other interested persons. Thus, FC is free to negotiate with Community Foundation for public use of the right-of-way until the February 17, 2011 expiration of the existing public use condition.

Community Foundation has submitted a statement of willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. FC filed a statement that it is willing to negotiate with Community Foundation for rail banking and interim trail use of the right-of-way.

Because Community Foundation's request complies with the requirements of 49 C.F.R. § 1152.29, and FC is willing to negotiate with Community Foundation for Trail Use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period described below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, FC may fully abandon the line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

Abandonment of this rail line will have no significant effect on the quality of the human environment and the conservation of energy resources or on historic resources.

It is ordered:

1. This proceeding is reopened.
2. The request for a public use condition is denied.
3. The request for a NITU, under 16 U.S.C. § 1247(d), is granted.
4. Upon reconsideration, the notice served and published in the Federal Register on July 22, 2010, 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 to permit Community Foundation to negotiate with FC for trail use of the subject line, for a period of 180 days from the service date of this decision and notice until August 8, 2011.
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 any future use of the property for restoration of railroad operations 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, the trail user 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 August 8, 2011, interim trail use may be implemented. If no agreement is reached by that time, FC may fully abandon the line, after the conditions imposed in the August 2010 decision are met. See 49 C.F.R. § 1152.29(d)(1).

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

By the Board, Rachel D. Campbell, Director, Office of Proceedings.